TWO

# TREATISES

The *FIRST*, Proving both by

HISTORY & RECORD

THAT THE

# BISHOPS

ARE A

## Fundamental & Eſſential Part

OF OUR

## Engliſh Parliament:

The *SECOND*,

That they may be

# JUDGES

IN

## Capital Caſes.

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*LONDON*,

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# THAT THE BISHOPS MAKE A FUNDAMENTAL & ESSENTIAL PART OF THE English Parliament.

THough the Demerits of this Sacred Order of men is ſufficiently known and acknowledged, though their Sufferings in the late ill times are notorious to the whole world, and no leſs a Scandal to this Nation, I ſpeak of thoſe who then traiterouſly uſurped the Name and Title of the Supreme Authority of *England*; yet there are not ſtill wanting thoſe of the old Leaven, who endeavour to embroil us again, who ſtill raiſe and maintain the old Scruples and Jealouſies, and endeavour as much as in them lies, to put us again into the old and preternatural Ferments of 42: 'tis ſtrange you will ſay, that a Nation ſhould be twice undone by the ſame ways and method; that the evil ſucceſs we all of us felt (ſave thoſe of the *Independent* Faction) ſhould not deter us from endeavouring the like unſetlements for the future; I wiſh our Fears and Jealouſies were groundleſs; but ſo long as the old and baffled Arguments are rallied by ſuch men, ſo long as they proceed to make ill uſe of the Indulgence of their Prince and his Government under whom they live in peace, and endeavour to unravel the Conſtitutions of our Parliaments, hereby to bring us into the Diſorders under which we ſo lately groaned, and out of which, by the goodneſs of God, we are now in ſafety eſcaped, it will not (I hope) be thought unſeaſonable to any perſon who is a Friend to his Prince or Country, or to himſelf in his own quiet and ſettlement which he now enjoyes, to mind and to adviſe him (I hope 'tis no ill counſel) *ſtare ſuper vias antiquas, to tread in and keep to the old paths. Regia via eſt tuta via, the Kings way is the ſafeſt and beſt of ways.* Let us then in the Name of God ſee what were the ancient uſages, the old Conſtitutions under which we and our Forefathers were happy, our ancient Kingdom ſo famous throughout the whole Civiliz'd World, hath flouriſhed, and become ſo renown'd

as erſt it hath been: And ſeeing a great Queſtion hath of late, and is now again raiſed concerning the Sacred Order of Biſhops, as to their Right of being and voting in our Parliaments, we ſhall endeavour to evince and prove this great Point, which 'tis hoped may in a good meaſure contribute to the allaying the heats of this ſort of men amongſt us, and who ſeem to be the moſt buſie and forward in theſe Embroylments. And that we may the more orderly and methodically proceed to evince what we have undertaken, and in regard this Queſtion is about the very Conſtitution of our Government, we can, I think, do no better than to make uſe herein of the good old Maxim and Rule *de Legibus & longa conſuetudine. Si de interpretatione Legis quæritur, inprimis inſpiciendum eſt, quo jure Civitas retro in hujuſmodi caſibus uſa fuerit: Conſuetudo enim optima interpretatio Legis eſt. If you would know the true ſence and interpretation of any Law, you muſt eſpecially look to the practice and uſage of the Law; for that Cuſtom is the beſt interpretation of the Law.* We now ſeem (at leaſt ſome party amongſt us) to queſtion whether our Biſhops are an Eſſential part of the Parliament; which, together with His Majeſty, as to the Enacting of Laws, and giving of Aids and Subſidies, is the old Government under which *England* hath heretofore to the envy of our Neighbours, flouriſh'd and been happy.—*Fœlices nimium bona ſi ſua norant Angli.*

That we may then (I ſay) put this Queſtion out of queſtion, we ſhall endeavour to prove by two ſorts of Arguments; of which one ſhall be *De Jure*, and the other *De Facto*: the one derived from that Original Right which is veſted in them; the other from the conſtant Exerciſe and continual practice by which that Right hath been enjoyed in all times foregoing.

And firſt we ſhall begin with the proofs *de jure*, and therein firſt with that which doth occur in the Laws of King *Athelſton*, one of the firſt Monarchs of the Engliſh Saxons. Among which there is a Chapter (it is *chap.* 11.) entituled *De officio Epiſcopi & quid pertinet ad officium ejus*; that is to ſay, Touching the office of a Biſhop, and that which doth of right belong unto it. In which Chapter it is thus declared, *viz. Epiſcopo jure pertinet omnem rectitudinem promovere, Dei ſcilicet & ſeculi &c.* (†) *& convenit ut per conſilium & teſtimonium ejus omne Legis ſcitum, & Burgi menſura; & omne pondus ſit ſecundum dictionem ejus inſtitutum*; that is to ſay, it belongeth of right unto the *Biſhop*, to promote Juſtice in matters which concern both the Church and State, and unto him it appertaineth, that by his Counſel and Award, all Laws, and Weights, and Meaſures, be ordained throughout the Kingdom.

(†) *Spelm. Conſ* p. 402.

2. Next we will have recourſe to the old *Record* entituled, *Modus tenendi Parliamentum*; In which it is affirmed, *Ad Parliamentum Summoniri & venire debere* Archiepiſcopos, Epiſcopos, *Abbates, Priores, & alios majores* Cleri, *qui tenent per Comitatum aut Baroniam ratione hujuſmodi tenuræ*; (*) That all the *Archbiſhops, Biſhops, Abbats, Priors*, and other *Prelates* of the Church, who hold their Lands either by an *Earls* Fee, or a *Barons* Fee, were to be ſummoned, and come to *Parliament* in regard of their Tenure.

(*) *Modus tenendi Parliamentum.*

3. Next, look we on the Chartularies of King *Henry* the firſt, recognized

cognized in full Parliament at *Clarendon*, under *Henry* the ſecond, where they are called *Avitas conſuetudines*, which declare it thus; *Archiepiſcopi, Epiſcopi, & univerſæ Perſonæ qui de Rege tenent in capite, habeant poſſeſſiones ſuas de Rege ſic ut* Baroniam, *&c. Et ſicut cæteri Barones debent intereſſe judiciis Curiæ Regis cum Baronibus, quouſque pervenerit ad diminutionem membrorum vel ad mortem* (*) The meaning is in brief, that *Archbiſhops, Biſhops*, and all other Eccleſiaſtical Perſons which hold in *Capite* of the King, are to have and hold their Lands in *Barony, and that they ought as Barons* to be preſent in all Judgments with the other *Barons* in the Court of *Parl.* untill the very Sentence of Death or Mutilation (which was very common in thoſe times) was to be pronounced. And then they commonly did uſe to withdraw themſelves, not out of any incapacity ſuppoſed to be in them by the Law of *Engl.* but out of a reſtraint impos'd upon them by the Can. of the Church of *Rome*. (*) *Math. Paris in H. 2.*

4. In the *Great Charter* made by King *John*, in the laſt of his Reign, we have the form of ſummoning a *Parliament*, and calling thoſe together who have Votes therein, thus expreſſed at large. *Ad habendum commune concilium Regni de auxilio aſſidendo, &c. Et de ſcutagiis aſſidendis, faciemus ſummoneri Archiepiſc. Abbates, Comites, & majores Barones Regni ſigillatim per literas noſtras, & præterea ſummoneri faciemus in generali per Vice-Com. & Ballivos noſtros omnes alios qui in Capite tenent ad certum diem, ſcil. ad terminum* 40 *dierum ad minus, & ad certum locum, &c.* (†) In which we have not only a moſt evident Proof, that the *Biſhops* are of right to be called to *Parliament*, for granting *Subſidies* and *Eſcuage*, and treating of the great Affairs which concern the Kingdom, but that they are to be ſummoned by particular Letters, as well as the *Earls* & *Barons*, or either of them; A form or copy of which Summons iſſued in the time of the ſaid King *John*, is extant on Record, and put in Print not many years ſince in the Titles of Honour. (†) *Id. in Joh.* (*) *P. 1.* 20. 5.

5. We have it thus in the *Magna Charta* of King *Henry* the 3*d.* the Birthright of the *Engliſh* Subject, according as it ſtands tranſlated in the Book of Statutes. *Firſt we have granted to God, and by this our preſent Charters have confirmed for us, and our Heirs for ever, That the* Church of England *ſhall be free, and ſhall enjoy all her whole* Rights and Liberties *inviolable*, (†) But it is a known *Right* and *Liberty* of the Church of *England*, that all the *Biſhops*, and many of the greater *Clergy* (and peradventure alſo the *Inferior Clergy* in the ſaid Kings time) had their *Votes* in *Parliament*; and therefore is to be preſerved *inviolable* by the Kings of *England*, *their Heirs and Succeſſors for ever*. Which Charter, as it was confirmed by a Curſe denounced on all the Infringers of it, by *Boniface* Arch-Biſhop of *Canterbury*, (*) and ratified, in no fewer than 80. ſucceedings Parliaments: So was it Enacted in the Reign of *Edward* the firſt, That *it ſhould be ſent under the great Seal of* England, *to all the Cathedral Churches of the Kingdom, to be read twice a year* before the People; (†) That they ſhould be ready four times a year in a full County Court, (*) and finally that *all Judgments given againſt it ſhould* be void and null; (†) the Application of which laſt Clauſe I refer to thoſe, to whom the rectifiing of the Error (which to the contrary thereof hath been committed) doth of right belong. (†) *Magna Charta c. 1.* (*) *Math. Par. in H. 3.* (*) 28 *E. 1. c. 1.* (†) 28 *E. 1. c. 2.* (*) 28 *E. 1. c. 3.*

6. We have the Proteſtation of *John Stratford* Arch Biſhop of *Canterbury*, in the time of King *Edward* the 3*d.* who being in diſfavour with

the King, and denied entrance into the Houſe of *Peers*, challenged his Place, and Suffrage there, as the firſt *Peer of the Realm*, and One that *ought to have the firſt voice in* Parliament in right of his *See*.

But hear him ſpeak his own words, which are theſe that follow, *Amici* (for he ſpake to thoſe that took witneſs of it) *Rex me ad hoc Parliamentum ſcripto ſuo vocavit, & ego tanquam* major par Regni *poſt Regem*, & primam voce habere debens *in Parliamento*; jura Eccleſiæ meæ Cantuarienſis *vendico & ideo ingreſſum in* Parliamento peto (†) which makes it plain enough, that the Arch-Biſhop did not challenge a place in Parliament, as the firſt Peer of the Realm, either by way of favour, or cuſtom only, but as a power and priviledge as he ought to have (*habere debent* are the words) in the Right of his *See*.

(†) *Antiqui. Brit. in Gati. Stratford.*

7. And laſtly, there is the proteſtation on Record, of all the Biſhops in the Reign of King *Richard* the 2*d*. at what time *William Courtney* was Arch-Biſhop of *Canterbury*: who being to withdraw themſelves from the Houſe of *Peers*, at the pronouncing of the *S*entence of Death on ſome guilty Lords, firſt made their *Procurators* to ſupply their rooms, and then put up their *Proteſtations* to preſerve their Rights; the ſum whereof, for as much as doth concern this buſineſs in their own words thus; De jure, & conſuetudine *Regni* Angliæ *ad Archiepiſcopum* Cantuarienſem, *qui pro tempore fuerit, nec non cæteros* Suffraganos, *confratres, & compatres, Abbates & Priores, alioſque Prelatos quoſcunque per* Baroniam *de Domino Rege tenentes*, Pertinet, *in Parliamentis Regis quibuscunque*, ut Pares *Regni prædicti perſonaliter intereſſe ibidemque de* Regni negotiis, *ac aliis tractari conſuetis cum cæteris dicti Regni* paribus, *& aliis ibidem* jus intereſſendi *habentibus Conſulere, & Tractare, Ordinare, Statuere, & Definire, ac cætera facere quæ Parliamento ibidem imminent facienda.* (†) It appertains ſay they, both by Right and Cuſtom to the Arch-Biſhop of *Canterbury* for the time being, as alſo unto all the reſt of his Compeers, as well as the *S*uffragan Biſhops, as to the Abbots, Priors and other Prelates whatſoever, which hold their Land by *Barony* of our Lord the King, to be perſonally preſent at all Parliaments as *Peers of the Realm*, and there together with the reſt of the Peers, and all other, which have Right to be therein preſent to Conſult, treat of, and Ordain, and finally to determine and eſtabliſh all ſuch things, and matters, as are accuſtomably handled, and ordained in Parliaments. Which ſets the matter as I take it beyond all diſpute, as to the firſt of theſe two heads, or ſorts of Arguments, whereby I was to prove this point, which were thoſe *de jure*.

(†) *In vita Gu. Courtney*

Let us next ſee whether this *Right* of theirs be confirmed and countenanced by continual practice, and that they have not loſt it by *Diſcontinuance*; which is my ſecond kind of Argument, thoſe I mean *de facto*. And in this way of proof, we can go as high, as the firſt preaching of the Goſpel to the *Engliſh Saxons*, and ſo deſcend unto thoſe laſt times without interruption. By which it will appear, that Chriſtianity in this Nation, and the Biſhops Votes in Parliaments, and Common Councils, are of like Antiquity.

For firſt, no ſooner had King *Ethelbert* received the Goſpel, but preſently we read, that as well the *Clergy*, as the *Laity*, were ſummoned to the Common Council: which the *Saxons* ſometimes called

*Mytell*

*Myeell Synoth*, the great Assembly, and sometimes *Witennegemote*, the Councel or Assembly of the Wise men of the Realm, *Anno* 605. *Ethelbertus Rex in fide corroboratus Catholica*, &c. Cantuariæ *convocavit Commune Consilium tam* Cleri, *quam* Populi; King (†) *Ethelbert*, as my Author hath it, being confirmed in the Faith in the year 605. (which was but nine years after his Conversion) together with *Berha* his Queen, their Son *Thalbald*, the Reverend Archbishop *Augustine*, and all the rest of the Nobility, did solemnize the Feast of Christs Nativity in the City of *Canterbury*; and did there cause to be assembled on the 9th. of *January*, the *Common Council* of his Kingdom, as well the Clergy, as the Lay-Subject; by whose Consent and Approbation he caused the Monastery by him built, to be dedicated to the honour of God Almighty, by the hand of *Augustine*.

(†) *H. Spelman in Conc. P.* 116.

And though no question other Examples of this kind may be found amongst the *Saxon Heptarchies*, yet being the *West Saxon* Kingdom did in fine prevail, and united all the rest into one *Monarchy*, we shall apply our selves unto that more punctually and with greater care.

I. And first we read of *Egbert*, who first united the seven Kingdoms of the *Saxons* under the common name of *England*, that he caused to be convened at *London* his Bishops, and the Peers of the highest Rank, *pro consilio capiendo adversus Danicos Pyratas*, (*) to advise upon some course against the *Danish* Pyrates, who infested the Sea-coast of *England*.

(*) *Charta Whitlagii Mercyorum Regis ap. Ingulph.*

II. Another Parliament or Council (call it which you will) called at *Kingbury*, *Anno* 855, in the time of *Ethelwolph*, the Son of *Egbert*, *pro negotiis Regni*, (†) to treat of the Affairs of the Kingdom; the Acts whereof are ratified and subscribed by the *Bishops*, *Abbots*, and other great men of the Realm.

(†) *Charta Bertult mer. Regis ap. Ingulf.*

III. We find that the same King *Ethelwolph* in a Parliament, or Assembly of his States at *Winchester*, *Anno* 855. *Cum consilio Episcoporum & Principum*, (*) by the Advice and Counsel of the *Bishops* and Nobility, confirmed unto the *Clergy* the tenth part of all mens Goods, and ordered that the Tythe so confirmed unto them should be free *ab omnibus secularibus Servitutibus*, from all secular Services and Impositions.

(*) *Ingulf. Croyland. hist*

IV. The two Charters were issued out by *Athelstone* above-mentioned, *Consilio Wifelmi Archiepiscopi mei, & aliorum Episcoporum meorum*, (†) by the advice of *Wifelme* his Archbishop, and his other Bishops.

(†) *Ap. eund. p.* 402, 403.

And V. That *Ina* in the year 902. caused the great Council of his Realm to be Assembled, consisting *ex Episcopis*, *Principibus*, *Proceribus*, &c. of Bishops, Princes, Nobles, Earls, and of all the wise men, Elders, and people of the whole Kingdom, and there Enacted divers Laws for the weal of this Realm. (*) We also read this in the Reign of *Edrid*, Anno 948. *viz. in festo igitur Nativitatis* Beatæ Mariæ *cum universi Magnates Regni per Regium Edictum summoniti, tam* Archiepiscopi & Episcopi, *ac* Abbates, *quam cæteri totius Regni Proceres & Optimates* Londini *convenissent ad tractandum de negotiis publicis totius Regni*; (†) That in the Feast of the Nativity of the Blessed *Virgin*, the great men of the Realm, that is to say, *Archbishops*, *Bishops*, *Abbots*, Nobles, Peers, were summoned by the Kings Writ to appear at *London*, to handle and conclude about the publick Affairs of the Kingdom.

(*) *Ap. eund. p.* 219.

(†) *Id. ibid. p.* 497. *edit. Lond.*

Mention

Mention of which Assembly is made again at the Foundation and Endowment of the Abbey of *Crowland*, (†) and afterwards a Confirmation of the same by *Edgar*, Anno 966. *Præsentibus Archiepiscopis, Episcopis, Abbatibus, & Optimatibus Regni*; (*) In the presence of *Archbishops, Bishops, Abbots*, and Peers of the Realm. The like Convention of *Estates* we find to have been called by *Canutus* the *Dane*, after the death of *Edm. Ironside*, for the setling of the Crown on his own head, of which thus the Author, (†) *Cujus post mortem Rex* Canutus *omnes* Episcopos, *& Duces, nec non & Principes, cunctosq; Optimates gentis* Angliæ, Londini *congregari jussit*. Where we still find the *Bishops* to be called to *Parliament*, as well as the Dukes, Princes, and the rest of the Nobility; and to be ranked and marshalled first (which clearly shews that they were always reckoned for the *first Estate*) before the greatest and most eminent of the *Secular* Peers. And so we find it also in a Charter of King *Edward* the *Confessor*, the last King of the *Saxon* Race) by which he granted certain Lands and Priviledges to the Church of *Westminster*, An. 1066. *Cum Concilio & Decreto* Archiepiscoporum, Episcoporum, *Comitum, aliorumq; Optimatum*; (*) with the Counsel and Decree of the *Arch-bishops, Bishops*, Earls, and others of his Nobles. And all this while the *Bishops* and other Prelates of the Church did hold by no other Tenure than *in pura & perpetua Eleemosyna*; (†) or *frank Almoygne*, as our Lawyers call it; and therefore sate in *Parliament* in no other capacity than as *Spiritual* persons meerly; who by their extraordinary knowledge in the Word of God, and in such other parts of Learning as the world then knew, were thought best able to direct and advise their Princes in all points of difficulty. But when the *Norman* Conqueror had possest the State, then the case was altered. The *Prelates* of the Church were no longer suffered to hold their Land in *Frank Almoigne*, as before they did, or to be free from Secular Services and Commands, as before they were. Although they kept their Lands, yet they changed their *Tenure*, and by the Conqueror were ordained to hold their Lands *sub militari servitute*, (*) either in *Capite*, or by *Baronage*, or some such *military* hold, and thereby were compellable to aid the King in all times of War, with Men, Arms, and Horses, as the Lay-Subjects of the same *Tenures* were required to do.

(†) *Mid p.* 500.

(*) *Id. p.* 5. *p.* 1. 50.

(†) *Rog. Hoved. Annal pag. prior p.* 250.

(*) *ap. H. Spel. in Concil. p.* 630.

(†) *Camden in Brit.*

(*) *Mat. Paris in Will.* 1. *An.* 1070.

Which though it were conceived to be a great *Disfranchisement* at first, and an heavy burden to the *Prelacy*, yet it conduced at last to their *greater honour*, in giving them a *further Title to their Place in Parliament*, than that which formerly they could pretend to. Before, they claimed a place therein *ratione Officii*, only by reason of their *Offices*, or *Spiritual* Dignities; but after this, by reason also of those *Baronies*, which were erected, and annexed to their several Dignities; *En respect de leur possessions l'antient Baronies annexes a leur Dignities* (†) as our Lawyers have it. From this time forwards we must look upon them in the House of *Parliament*, not as *Bishops* only, but as *Peers* and *Barons* of the *Realm* also; and so themselves affirmed to the *Temporal* Lords in the *Parliament* holden at *Northampton*, under *Henry* the Second. *Non sedemus hic* Episcopi, *sed* Barones, *Pares hic sumus*: (*) We sit not here, say they, as *Bishops* only, but as *Barons*; we are *Barons*, and you are *Barons*; here we sit as *Peers*. Which last

(†) *Stratford Pleas. l.* 3.

(*) *Selden titles of hon. p.* 2. 18.

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is also verified in *terminis*, by the words of a Statute, or Act of Parliament, wherein the *Bishops* are acknowledged to be *Peers of the Land.*

But to proceed more particularly to our proofs *de facto*, after the alteration of their Tenures by the *Norman* Conqueror; we find a Parliament assembled in the fifth year of that King, wherein are present *Episcopi, Abbates, Comites, & Primates totius Angliæ*, (†) the *Bishops*, Abbots Earls, and the rest of the Baronage of *England*. (*) *Math. Paris in Willielmo 1.*

And 3*ly*. In the ninth year of *William Rufus*, an old Author telleth us, *de Regni statu acturus*, Episcopos, *Abbates*, & *quoscunque Regni Proceres in unum præcepti sui sanctione egit*, that being to consult of the Affairs of the Kingdom, he called together by his Writ the *Bishops*, Abbots and all the Peers of the Realm, (†) (†) *Edmor hist. Mov. l. 2*

And 2*ly*. During the Reign of King *Henry* the first, for we will take but one example out of each Kings Reign, though each Kings Reign would yeild us more) a *Parliament* was called at *London*. wherein were many things dispatched, aa well of *Ecclesiastical*, as Secular nature, the *Bishops*, and Abbots being present with the other Lords; *Coacto apud* Londinium *Magno* Episcoporum *& Procerum, Abbatumque concilio*, multa Ecclesiasticarum, & Secularium rerum ordinata negotia, decisa Litigia, saith the Monk of *Malmsbury* (†) and of this *Parliament* it is, I take it, that *Edmor* speaketh *Hist. Novel. l.* 4. *p.* 91. (†) *Malmbs. Hist. Reg. Ang. l.* 5.

Proceed we 4*ly*. to King *Henry* the second (for King *Stephens* Reign was so full of *Wars* and Tumults, that there is very little to be found of *Parliaments*) and there we find the *Bishops* with the other *Peers*, convened in Parliament for the determination of the points in controversy between *Alphonso* King of *Castile* and *Sancho* King of *Navarre*, referred by com-promise to the King of *England*, and here determined by King *Henry* amongst other things. *Habito cum* Episcopis, *Comitibus & Baronibus* cum deliberatione *Consilio*, as in *Roger Hoveden* (†) (†) *Hoveden. Annal. pac. Rose in H. 2.*

5*ly*. Next time comes *Richard* the first, his Son; during whose Imprisonment by the *D.* of *Austria*, his Brother *John* then Earl of *Moriton*, endeavoured by force and cunning in *Normandy* to set the Crown on his own head; which caused *Hubert* the Archbishop of *Canterbury*, to call a Parliament (*Convocatis coram eo Episcopis, Comitibus & Baronibus Regni*, (†) wherein the Bishops, Earls, and Barons, did with one consent agree to seize on his Estate, and suppress his power, the better to preserve the Kingdom in *Wealth*, Peace, and Safety. (†) *Id. in Ioh.*

6*ly*. After succeeded *John*, and he calls a *Parliament*, wherein were certain Laws made for the defence of this Kingdom, *Communi assensu* Archiepiscoporum, Episcoporum, *Comitum, Baronum & omnium fidelium suorum Angliæ*, by the Common Counsel and Assent of the *Archbishops*, *Bishops*, Earls, Barons, and the rest of his Lieges. (Remember what was said before touching the Writ of Summons in the said Kings time) from this time till the last *Parliament* of King *Charles*, there is no Kings Reign of which we have not many, (though not all) the Acts of Parliament still it Print amongst us. Nor is there any Act of Parliament in the Printed Books, to the Enacting of which the Bishops Approbation and Consent is not plainly specified, either in the general *Proem* set before the Acts, or in the Body of the Acts

themſelves; as by the Books themſelves doth at large appear.

7ly. And to this kind of proof may be further added the Form and manner of the Writ, by which the Prelates in all times have been called to Parliament, being the very Law *Verbatim*, with that which is directed to the *Temporal* Barons; ſave that the *Spiritual* Lords are commanded to attend the *Service*, *in fide & dilectione*, the Temporal *in fide & Homagio*, and of late times *in fide & Ligeantia quibus nobis tenemini*. A Form or Copy of which Summons as ancient as King *John*'s time, is ſtill reſerved upon Record, directed *Nominatim* to the Archbiſhop of *Canterbury*; (†) and then a *Scriptum eſt ſimiliter* to the reſidue of the *Biſhops*, Abbots, Earls and Barons. Then add the *Privilege* of Parliament for themſelves and their Servants, during the time of the Seſſions, the Liberty to *kill and take one or two of the Kings Deer, as they paſs by any of his Foreſts in coming to* Parliament *upon his Commandment*, (*) their enjoying of the ſame Immunities, which are and have been heretofore enjoyed by the *Temporal* Barons; (†) and tell me if the Biſhops did not ſit in *Parliament* by as good a Title as the Temporal Lords, and therefore *Eſſential*, *Fundamental* parts of the Court of Parliament.

(†) *Titles of Hon. part 2. cap. 1.*

(*) *Charta de foreſt. cap.*

(†) *Camden in Britania.*

By this Diſcourſe it may appear, that the Biſhops Sit and Vote in Parliament by a double capacity, as Biſhops, firſt in reference to their ſeveral Sees; and ſecondly, as *Peers*, in regard of their *Baronies*. In both reſpects accounted one of the *Three Eſtates*, and the *firſt alſo of the Three*, as from the Premiſes may be gathered without any great trouble. But in ſo nice a point as this, we ſhall not only build upon general *Inferences*, but particular *Evidences*.

And firſt it is affirmed by *Titus Livius*, in his Relation of the Life and Reign of King *Henry* the 5th, *That when his Funerals were ended, the three Eſtates of the Realm of* England *did aſſemble together, and declare his Son King* Henry *the* 6th. *being an Infant of* 8 *Months old, to be their Sovereign Lord*, (†) as his Heir and Succeſſor. And *three Eſtates* there could not be to perform that Service, unleſs the Biſhops were acknowledged to be one of the number.

(*) *Tit. Liv. M.S. in Bib. Bodl.*

2ly, *In the Parliament Rolls of King* Richard *the third, there is mention of a Bill or Parchment preſented to that Prince, being then Duke of* Gloceſter, *on the behalf, and in the Name of the* Three Eſtates *of the Realm of* England, *that is to wit, the* Lords Spiritual *and* Temporal, *and of the* Commons *by name; which foraſmuch as neither the ſaid* Three Eſtates, *nor the perſons which delivered it on their behalf, were then aſſembled in form of Parliament, was afterwards in the firſt Parliament of that King, by the ſame* Three Eſtates *Aſſembled in this preſent Parliament* (I ſpeak the very words of the Act it ſelf) *and by Authority of the ſame Enrolled, Recorded, and Approved*; (*) *and at the requeſt and by the aſſent of the* Three Eſtates *of this Realm, that is to ſay, the Lords* Spiritual *and* Temporal, *and* Commons *of this Land Aſſembled in this preſent Parliament, and by Authority of the ſame it be pronounced, decreed, and declared, that our ſaid Sovereign Lord the King was and is the very and undoubted Heir of this Realm of* England, *&c.*

(*) *An. Sped in K. R. 3.*

And

And 3ly, So it is acknowledged in a (†) Statute of 1 *El.* c. 3. where the Lords *Spiritual* and *Temporal, and the Commons in that Parliament aſſembled,* being ſaid expreſly and *in terminis* to repreſent the *three Eſtates* of the Realm of *England,* did recognize the Queens *Majeſty to be their True, Lawful, and undoubted Sovereign Liege'd Lady and Queen.* And in a Statute of the 8th. year of the ſaid Queens Reign, the Biſhops and Clergy are declared to be the *greateſt Eſtates of the Realm,* and called the *High Eſtate of Prelacy,* in another place. 1 *Eliz. c.* 3

It may perhaps be thought unneceſſary or impertinent, to add the Teſtimony and Authority of a private perſon to that which hath been ſaid by our Laws and Statutes. But being it is ſuch a Perſon as was accounted for the Oracle of the Law when he ſerved in Parliament, his Judgment may be taken for a creditable and ſufficient Evidence in the preſent Caſe. It is the Teſtimony and Authority of Sir *Edward Coke,* ſucceſſively Chief Juſtice of either Bench; who in his Book *Concerning the Juriſdiction of Courts,* ſpeaks thus of Parliaments; (†) *This Court* (ſaith he) *conſiſteth of the Kings Majeſty ſitting there as in his Royal Politick Capacity, and of the Three Eſtates of the Realm,* viz. *of the Lords Spiritual,* Archbiſhops *and* Biſhops, *who ſit there by Succeſſion in reſpect of their Counties, Baronies, parcel of their Biſhopricks which they hold alſo in their Politick Capacity; and every one of theſe when any Parliament is to be holden, ought* ex debito Juſtitiæ *to have a Writ of Summons. Secondly, The Lords Temporal, Dukes, Marqueſſes, Earls, Viſcounts and Barons, who ſit there by reaſon of their Dignities, which they hold by Deſcent or Creation, and likewiſe every one of theſe being of full age, ought to have a Writ of Summons* ex debito Juſtitiæ. *The Third* Eſtate *is the Commons of the Realm, whereof there be Knights of Shires or Counties, Citizens of Cities, and Burgeſſes of Burghs. All which are reſpectively Elected by the Shires or Counties, Cities and Burroughs, by force of the Kings Writ* ex debito Juſtitiæ, *and none of them ought to be omitted: And theſe repreſent all the Commons of the whole Realm, and are truſted for them.* So He: and this is plain enough beyond exception. (†) *Coke of Parl. fol.* 1.

Add hereunto *ex abundanti,* that in all Chriſtian Kingdoms of the *Gothick Model,* there are no more nor fewer than three Eſtates, convented at the Will and Pleaſure of the Supreme Prince, for their aſſiſtance and advice in Affairs of conſequence; that is to ſay, the Biſhops and other Eccleſiaſtical perſons, who are alwayes one, the *Nobles* for themſelves, and the *Commiſſioners* for the *Commons* of their ſeveral *Provinces*; for ſo we find it in the Conſtitutions of the *Roman* Empire, and the Realms of *Spain,* the Kingdoms of *France, Poland, Hungary,* together with thoſe of *Denmark, Sweden,* and the Realm of *Scotland.* And it were ſtrange if in the Conſtitution of the *Engliſh Parliaments,* or *Conventus Ordinum,* the Biſhops ſhould have been left out, and none at all elected to preſent the *Clergy.* But being admitted with the reſt in thoſe publick Meetings, and being looked on as the *Firſt Eſtate* in the *Stile* of that *Court,* it muſt needs be, that their *Excluſion* ſhakes the very *Fundamentals* of the ſaid *Aſſemblies,* and makes the whole *Body* to be maimed and mutilated for want of ſuch a *principal Member,* ſo neceſſary to the making up of the whole *Compoſitum.*

But

But againſt all this it is objected, firſt, that ſome Acts have paſſed in *Parliament*, to which the *Prelates* did not *Vote*, nor could be preſent in the Houſe when the Bill was paſſed; as in the ſentencing to death or mutilation of a guilty Perſon: as doth appear by the Laws and Conſtitutions recognized at *Clarendon*, and the following practice. This hath been touched on before, and we told you then, that this reſtraint was laid upon them, not by the common Law of *England*, or any *Act* or Ordinance of the Houſe of *Peers*, by which they were diſabled to attend that ſervice. It was their own voluntary Act, none compelled them to it, but only out of a conformity to ſome former Canons, *ad Sanctorum Canonum inſtituta*, (†) (as their own words are) by which it was not lawful for the *Clergy Men*, to be either Judges or Aſſeſſors *in cauſa ſanguinis* (*). And yet they took ſuch care to preſerve their Intereſt, that they did not only give their *Proxies* for there preſenting of their Perſons, but did put up their proteſtations, with a *ſalvo jure*, for the preſerving of their Rights for the time to come: *Jure* Paritatis *& intereſſendi in dicto Parliamento* (†) *quoad omnia & ſingula ibi exercendi in omnibus ſemper ſalvo*, as the manner was; Examples of which are as full and frequent, as their withdrawing themſelves on the ſaid occaſions.

(†) *Antiqui. Brit. in Gul. Courtney.*

(*) *Conſtitut. Othob. Fol.* 45.

(†) *Antiqu. Brit. in Gul. Courtney.*

But then the main Objection is, that as ſome *Acts* have paſſed in *Parliament*, *abſentibus Prelatis*, when the Biſhops did abſent themſelves of their own accord; ſo many things have been tranſacted in the Parliament *Excluſo Clero*, when the Clergy had been excluded or put out of the Houſe by ſome *Act* or *Ordinance*. A *Preſident* for this hath been found and publiſhed by ſuch as envied that poor remnant of the Churches honour: though poſſibly they will find themſelves deceived in their greateſt hopes, and yet the evidence will not ſerve to evince the cauſe. The Author of the Pamphlet entituled, *the Prerogative and practice of Parliaments*, firſt lays this Tenet for his ground, That many good *Acts* of Parliament may be made, though the *Archbiſhops*, and *Biſhops* ſhould not conſent unto them (†) (which is a point that no man doubts of, conſidering how eaſily their *Negative* may be over-ruled by the far greater number of the Secular *Peers*.) Then he adds that in a Parliament held at St. *Edmundsbury*, 1196. in the Reign of *Edward* the firſt, a Statute was made by the King, the Barons, and the Commons, *excluſo Clero*, and for the proof hereof refers us unto Biſhop *Jewel*.

(*) *Printed at Lond.* 1628 *p.* 31.

Now Biſhop *Jewill* ſaith indeed, "That in a Parliament *held at St.* Edmundsbury *by King* Edward *the firſt*, Anno 1296. *the Archbiſhops and Biſhops were quite ſhut forth, and yet the Parliament held, and good and wholſome Laws were there Enacted, the departing or abſence of the Lords* Spiritual *notwithſtanding.* (†) *In the Records whereof it is written thus*, Habito Rex cum Baronibus ſuis Parliamento, & Clero excluſo, ſtatutum eſt, &c. *The King keeping the Parliament with his Barons, the Clergy*, (*that is to ſay, the* Archbiſhops, *and* Biſhops,) *being ſhut forth, it was enacted*, &c. *Wherein who doth not ſee, if he hath* any eyes, that by this reaſon, (if the proof be good) many

(†) *Defence of the Apol. part* 6.c.2.S. 1.

many good *Acts of Parliament* may be made, though the *Commons* either out of abſence or oppoſition ſhould not conſent unto the ſame; of whoſe conſent unto that *Statute* (whoſoever it was) there is *as little* to be found in that *Record*, as the concurrence of the *Biſhops*. But for anſwer unto ſo much of this *Record* ſo often ſpoke of, and applauded, as concerns the Biſhops, we ſay, that this (if it be truly ſenced, as I think it is not) was the particular Act of an *Angry* and *Offended* King againſt his *Clergy*, not to be drawn into example as a proof or Argument againſt a moſt *clear*, *known* and *undoubted* Right.

The Cauſe ſtood thus, A Conſtitution had been made by *Boniface* the 8th, *Ne aliqua collecta ex eccleſiaſticis proventibus Regi, aut cuivis alii Principi concedatur*; (†) that *Clergy-men* ſhould not pay any Tax or Tallage unto Kings or Princes out of their Spiritual Preferments without the leave of the *Pope*. Under pretence whereof, the *Clergy* at this Parliament at St. *Edmonsbury*, refuſed to be contributary to the Kings occaſions, when the *Lay-Members* of the Houſe had been forwards in it. The King being herewith much offended, gives them a further Day to conſider of it, *Adjourning* the Parliament to *London*, there to begin on the morrow after St. *Hilaries* Day; and in the mean time commanded all their *Barns* to be faſt *ſealed up*. The day being come, and the *Clergy* ſtill perſiſting in their former obſtinacy, *Excluſo è Parliamento Clero Conſilium Rex cum ſolis* Baronibus *& populo habuit, totumq; ſtatim* Clerum *protectione ſua privavit*; (*) The King (ſaith the Hiſtorian) excluding the *Clergy* out of the Parliament, adviſed with his *Barons*, and his *People* only, what was beſt to be done; by whoſe Advice he put the *Clergy* out of his protection, and thereby forced them to conform to his Will and Pleaſure.

(†) *Math. Weſt. in E.* 1.

(*) *Antiqu. Brit. in R. Winchelſey.*

This is the *Summa totalis* of the Buſineſs, and comes unto no more but this, that a *particular courſe* was adviſed in Parliament on a *particular Diſpleaſure* taken by the King againſt the Body of his *Clergy* then convened together, for their particular refuſal to contribute to his Wants and Wars, the better to reduce them to their natural Duty. Which makes not any thing at all againſt the *Right* of *Biſhops* in the Houſe of *Peers*, or for *excluding* them that Houſe, or for the *validity* of ſuch Acts as are made in Parliament during the time of ſuch excluſion; eſpecially conſidering that the King ſhortly after called his *States* together, and did *excuſe* himſelf for many extravagant Acts which he had committed (†) againſt the Liberties of the Subject, (whereof this was one) laying the blame thereof on his great occaſions, and the neceſſity which the Wars which he had abroad did impoſe upon him.

(†) *Wolſingh. in E.* 1. *An.* 1297.

And ſo much as in Anſwer unto that *Record*, ſuppoſing that the words thereof be rightly ſenced, as I think they are not, and that by *Clerus* there, we are to underſtand *Archbiſhops* and *Biſhops*, as I think we be not, there being no *Record* (I dare boldly ſay it) either of Hiſtory or Law, in which the word *Clerus* ſerves to ſignifie the *Archbiſhops* and *Biſhops*, excluſive of the other *Clergy*, or any Writing whatſoever, wherein it doth either not ſignifie the whole *Clergy* generally, or the *inferiour Clergy* only excluſive of the *Archbiſhops*, *Biſhops*, and other Prelates. Therefore in anſwer unto that ſo much applauded Cavil of *Excluſo Clero*,

*Clero*, from what Record ſoever it either hath been hitherto, or ſhall hereafter be produced, I ſhall propoſe it to the conſideratiou of the ſober Reader, whether by *Clerus* in that place, or in any other of that kind and time, we muſt not underſtand the *Inferior Clergy*, as they ſtand diſtinguiſhed in the Laws from my Lords the Biſhops.

For howſoever it be true that *Clerus* in the *Eccleſiaſtical* Notion of the Word doth ſignifie the whole *Clergy* generally, Archbiſhops, Biſhops, Prieſts and Deacons; yet in the Legal notion of it, it ſtands diſtinguiſhed from the *Prelates*, and ſignifieth only the inferiour *Clergy*. Thus do we find the *Eccleſiaſticks* of this Realm divided into *Prelates, men of Religion*, and other *Clerks*, 3 *E.* 1. *c.* 1. the *Seculars* either into *Prelates* and *Clerks*, 9 *E.* 2. *c.* 3. 1 *R.* 2. *c*, 3. or *Prelates* and *Clerks Beneficed*, 18 *E.* 3. *c.* 2. or generally into the *Prelates* and the *Clergy*, 9 *E.* 2. *c.* 15. 14 *E. c.* 1. & 3. 18 *E.* 3. 2, 7. & 25 *E.* 3. 2, 4. & 8 *Hen.* 6. *c.* 1. And in all Acts and Grants of Subſidies made by the *Clergy* to the Kings or Queens of *England* ſince the 32*d.* of *H.* 8, (when the Clergy-Subſidies firſt began to be confirmed by Act of Parliament.

So alſo in the *Latin* Idiom, which comes neareſt home, *Nos Prælati & Clerus*, in the ſubmiſſion of the *Clergy* to King *H.* 8. (†) and in the Sentence of Divorce againſt *Anne* of *Cleve* (*) and in the Inſtrument of the Grant of the *Clergy*-Subſidies preſented to the Kings of *England* ever ſince the 27th. of Queen *Eliz.* and in the form of the Certificates (*per* (†) *Prælatos & Clerum*) returned by every *Biſhop* to the Lord *High Treaſurer*, and finally, *Nos Epiſcopi* & Clerus Cantuarienſis Provinciæ *in hac Synodo more noſtro ſolito, dum Regni Parliamentum* celebratur, Congregati. (*) In the Petition to K. *Philip* and *Mary*, about the Confirmation of the Abbey-Lands to the Patentees; ſo that though many Statutes have been made in theſe latter times, *Excluſo Clero*, the Clergy, that is to ſay, the *inferior Clergy* (who anciently had their place in Parliaments) being quite ſhut out, and utterly excluded from thoſe publick Councils; yet this proves nothing to the Point, that any *Act* of *Parliament* hath been counted good, to which the Biſhops were not called, or at the making of which *Act* they either were *ſhut out* by Force, or excluded by Cunning.

(1) *Regiſt. Watham.*
(*) *Regiſt. Cranmer.*
(†) *Stat.* 8 *Eliz. c.* 17. *& ever ſince.*
(*) *Stat.* 1. *Phil. & Mary, c.* 8.

But then, beſides the ſo much celebrated Argument of *excluſo Clero*, the Author of the Pamphlet before remembred, hath told us ſomewhat on the credit of *Kilbancies* book; In which the Juſtices are made to ſay 7 *Hen.* 8. *That our* Sovereign Lord the King, *may well hold his* Parliament *by him, and his* Temporal *Lords, and by the* Commons *alſo, without the* Spiritual *Lords, for that the* Spiritual Lords *have not any place in the* Parliament *Chamber, by reaſon of their* Spiritualities, *but by reaſon of their* Temporal *Poſſeſſions. But firſt this is but the* Opinion of a private man, of no Authority or Eſteem for ought we can can find in the Realm of *England*, and therefore not concluding in ſo great a buſineſs. And 2*dly.* admitting him to be a man of more note and credit than perhaps he was, yet he muſt needs fall ſhort in all reſpects, both for *Abilities* and *Reputation* of Chief Juſtice *Coke*, whoſe Judgment to the contrary we have ſeen before. But 3ly, it runs croſs to the ancient practice of the *Saxon* Times, in which the Biſhops ſate in *Parliament* as *Spiritual Perſons*, without relation to

their

their *Temporal* Poſſeſſions. or their *Barons Fees*, as afterwards in the Reign of the *Norman* Kings. And finally, admitting that *Kilbancies* Plea were of weight enough to keep the Biſhops down from riſing to their place in *Parliament*, it muſt be ſtrong enough to exclude all the *Temporal* Lords; The *Temporal* Lords being called to Parliament on no other ground, than for the *Temporal* poſſeſſions which they hold by Barony. *Adeo argumenta ab abſurdo petita, ineptos habent exitus*, ſaid *Lactantius* truly, It is the Fate (ſaid he) of ill choſen *Premiſes*, that they produce ridiculous and abſurd *Concluſions*.

There remains one Objection more, and indeed the greateſt, not extant in the Pamphlet before remembred, though poſſibly promoted and occaſioned by it; that is to ſay, that the Biſhops are excluded from their Place and Vote by Act of Prrliament, deliberately made and paſſed by the Kings conſent. For anſwer whereunto, it will be neceſſary firſt to ſtate this Queſtion, *viz*: Whether that any two of the *the three Eſtates*, coucnrring or agreeing together, may conclude any thing which tends to the Subverſion of the third. *Bodinus* that renwoned *Stateſman*, hath reſolved it negatively, and determined thus; *Nihil a duobus ordinibus diſcerni poſſe, quo uni ex tribus incommodum inferatur*, &c. (†) That nothing can be done by two of the *three Eſtates*, to the diſprofit of the third, in caſe the point propoſed be ſuch as concerns them ſeverally; and he reſolved thus in favour of the *Commons* of the Realm of *France*, who were upon the point of being excluded from the Parliament, or Convention of the *three Eſtates*, if he had not notably beſtirred himſelf in their behalf (he being then a *Delegate* or Commiſſioner for one of the Provinces) and by his diligence and care preſerved their Intereſts; and to preſeve their Intereſt, he inſiſted cheifly on the antient cuſtom of the Realm of *France*, as alſo on the Realm of *Spain* and *England*, and the *Roman Empire*; in each of which it was received for a ruled Caſe, *Nihil a duobus ordinibus ſtatui poſſe, quo uni ex tribus prejudicium crearetur*, That nothing could be done by any of the *two Eſtates*, unto the prejudice of the third.

(†) *Bodin de Rep. l.* 3. *c.* 7.

And if it were a ruled Caſe; then in the Engliſh Parliaments, there is no reaſon why it ſhould be otherwiſe in the preſent times, the Equity and Juſtice of it being ſtill the ſame, and the ſame reaſons for it now as forcible as they could be then. Had it been otherwiſe reſolved of in the former ages, wherein the *Clergy* were ſo prevalent in all publick Counſels, how eaſy a matter had it been for them, either by joyning with all the *Nobility* to exclude the *Commons*, or by joyning with the *Comuonalty* to exclude the *Nobles*? Or having too much Conſcience to venture in ſo great a change, and alteration, ſo incompatible, Inconſiſtent with the Conſtitution of a Parliament; how eaſily might they have ſuppreſſed the *Potency*, and impair the *Priviledges* of either of the other two, by by working on the humors or affections of the one to keep down the other?

Nor doth it help the matter in the leaſt degree to ſay that the Excluſion of the *Biſhops* from the Houſe of Peers, was not done meerly by the procurement of ſome of the other two Eſtates, but

by

by the Aſſent of the King, of whom the Laws ſay *He can do no wrong*, and by an Act of Parliament whereof our Lawyers ſay, (*) *que nul doit imaginer choſe diſhonourable*, (†) that no man is to think diſhonourable. For we know well in what condition the King was when he paſſed that *Act*, to what extremities he was reduced, on what terms he ſtood, how he was forced to withdraw from his City of *London*, to part with his dear Wife and Children, and in a word, ſo over-powred by the prevailing Party in the two Houſes of *Parliament*, that it was not ſafe for him (as his Caſe then was) to deny them any thing. And for the Act of *Parliament*, thus inſiſted on, beſides that the Bill had been rejected when it was firſt brought unto the *Lords*, and that the greater part of the *Lords* were frighted out of the Houſe, when contrary unto the courſe of *Parliament* it was brought again; it is a point reſolved both in Law and Reaſon, that the Parliament can do nothing to the deſtruction of it ſelf, and that ſuch Acts as are under a conſtraint, are not good and valid, whereof we have a fair example in the book of Statutes. (†)

(*) *Plowden in Commen.*

(†) 15 *Ed.* 3.

*For whereas the King had granted certain Articles pretended to be granted in the Form of a Statute, expreſly contrary to the Laws of the Realm, and his own Prerogative and Rights Royal* (mark it, for this is juſt the caſe) *which he had yeilded to eſchew the dangers, which by denying of the ſame were like to follow in the ſame Parliament, it was* repealed *in theſe following* words; *It ſeemed good to the ſaid Earles, Barons, and other wiſe men, that ſince the Statute did not proceed of our Free* Will, the ſame be void, and ought not to *have the name nor ſtrength of a* Statute, *and therefore by their Counſel and Aſſent we have decreed the ſaid* Statute *to be void, &c.* Or if it ſhould not be repealed in a Formal Manner; yet is this Act however gotten, void in effect already by a former Statute, in which it was enacted in full Parliament, and at the ſelf ſame place where this Act was gained, That the *Great Charter* by which and many other Titles, the Biſhops held their place in Parliament) *ſhould be kept in all points, and if any* Statute *be made to the contrary, it ſhall be held for none.* (*)

(*) 42 *Ed.* 3. 6. 1.

More Arguments than theſe againſt the Biſhops Place and Vote in Parliament I have no where found. And theſe being anſwered and refelled, I hope the point in queſtion hath been fairly proved, *viz. That the Biſhops make a Fundamental and Eſſential part of our Engliſh Parliaments.*

AN

# AN ANSWER TO THE GENTLEMANS Letter to his Friend:

SHEWING THAT

# BISHOPS MAY BE JUDGES IN Cauſes Capital.

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PSAL. 82. 1.

*Deus ſtat in Congregatione Dei: in medio Deorum judicat.*

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*LONDON*,

Printed by *Tho. Braddyll* for *Robert Clavell* at the *Peacock* in *S. Pauls* Church-Yard, 1680.

# AN ANSWER TO THE *GENTLEMAN's* Letter to his Friend:

## SHEWING THAT BISHOPS MAY BE JUDGES IN CAUSES CAPITAL.

*SIR*,

I Thank you for the Gentleman's Letter you sent me, touching *the Right of Bishops sitting as Judges in Cases Capital.* This *Order* of Men is not Sacred enough, it seems, in the Constitution, to secure it against (the Iniquity of these last Times) Attempts of Rage and Extirpation.

Not to mention *Martin Mar-Prelates*, nor others of former Times; within our own Memory, Mr. *Prynn* led up the Van against them (1640.) in a Book of this Title, *viz.* [*Lord-Bishops, none of the Lords Bishops.*] After their *Divine* or *Apostolical* Constitution, they began to question their *Right* to sit in *Parliament*. This occasioned that *Quodlibetical* Question, [*Whether the Bishops make a Fundamental and Essential part of the* English

Engliſh *Parliament*. The Rational and Solid *Anſwer* to which Queſtion was Printed in 1661; and now Reprinted (as then put forth at firſt) *for the Information of ſome, the Confirmation of others, and the ſatisfaction of all.*

The *Gentleman* who wrote this Letter, ſeems to grant the Biſhops a large ſhare of Power within this Kingdom; yet as to *Secular* Matters, he does inſinuate ſome kind of *Prohibition* they are ſuppoſed to lie under, though his Arguments are very inconſequent to prove it. The *Reſcript* of *Honorius* (he ſaith) & *Theodoſius*, & the *Decree* of *Juſtinian* forbid them to have to do *in Secular Matters*? Therefore the Kings of *England* (who are of another Mind, upon good experience of their judgment and fidelity) may *not admit* them *to have any Communion with Publick Functions*: Nor is the Argument leſs inconſequent, which the *Gentleman* inſinuates from the Apoſtles Declaration and Practice. The Argument muſt be this, A few men are appointed by our Lord to propagate the Goſpel, and plant the *Chriſtian Church* all the world over; and they think it unreaſonable they ſhould neglect this generous Employment (impos'd upon them immediately from Heaven, *to ſerve Tables*, that is, to relieve the Temporal Needs of indigent Diſciples) therefore when the Church is generally eſtabliſhed, Biſhops ſetled in every *Dioceſs*, and Miniſters in every *Pariſh*, it is equally unreaſonable that the King ſhould intruſt any of the *Clergy* with any *Secular Employments*.

But after theſe *By-blows*, this *Gentleman* tells us, *This is none of his buſineſs* (which he had therefore done better to have let alone;) 'Tis the *Critical* point he ſtands upon, which he calls *Vexata Quæſtio*, what is to be done in Parliament, that is, in *their Judicial way* upon *Trials*, not in their *Legiſlative* Capacity, paſſing Acts of *Attainder*, in which the *Gentleman* is pleaſed to confeſs [*I know that Biſhops have born a part; but* (ſaith he) *that is not now the Queſtion, but only this, Whether the Lords Spiritual have a Right to ſtay and ſit in Court, till the Court proceeds to the Vote of Guilty, or Not Guilty.*] This *Gentleman* concludes, They *ought not*. But the Queſtion truly and preciſely ſtated, is only this; Whether *of Right* they *may* or *may not*? And having diligently examined what hath been ſaid on both ſides (as the *Gentleman* hath adviſed me) I profeſs to differ from him, finding no ſufficient Reaſon to change my Opinion, which is for the *Affirmative*.

But the better to carry on his *Negative*, this *Gentleman* falls upon *Two Queſtions* more, which may be thought *preliminary*

to

to this other. The First is, touching the *Peerage* of the Lords Spiritual: The Second, Whether they make a *Third Estate* in Parliament? These two fall in *collaterally*, and must be considered before we fall upon his main *Battalia*, mustered up for the Defence of the Opinion we oppugn.

1. That the Bishops make a *Third Estate* in Parliament, there is very much alledged in the *Treatise* forementioned (from the Examples of all Christian Kingdoms of the *Gothick Model*, from *Titus Livius*, Sir *Edward Cooke*, the Parliament-*Rolls* of King *Richard* the Third, and the *Recognition* of the Lords Spiritual and Temporal with the Commons, 1 *Eliz.* 3. & 8. and what is argued from thence, *p.* 16, 17. of *the Rebels Plea*, Printed 1660.) to which I shall add that Mr. *Sheppard* in his *Grand Abridgment*, and the Word *Parliament* tells us, That *the Parliament in* England *is the Assembly of the King and the Three Estates of the Realm*, viz. *the Lords Spiritual, the Lords Temporal, and the Commons.* And this *Gentleman* does acknowledge (*p.* 86) that *the Subjects of* England *are divided into Three Estates, The Nobility the Clergy, and the Commonalty.* These, he saith, are the several *Estates* of the Kingdom. But if the Bishops be not *One* of these *Estates*, then one of the *Three Estates* of the Kingdom is not *Represented* at all in Parliament (for he saith, (*p.* 88.) that *the Convocation where all the Clergy are present in their* Persons, *or their* Representatives, *is no part of the Parliament*,) which is absurd. The Authority of Mr. *Selden* to the contraay, is most consonant to Reason; and the Practice at the *Ratification of the Peace* with the *French* King, 9 *H.* 5. & 11 *H.* 7. are further Confirmations of it.

But this *Gentleman* saith (*p.* 88.) *The Three Estates of Parliament are clean another thing; each must have a Negative* Voice *to all that passeth there*: I might take notice by the By of his Mistake herein; for there is nothing passeth where use is made of the *Negative* Voice: but *I* must observe, that this is a cleanly begging of the Question. As for the Bishops being *intermingled* with the *Earls* and *Barons*, and so if they be an *Estate*, it is an *Estate* within an *Estate*, *like a Nest of Boxes, one within another*, there is no absurdity at all in it: for when *Christianity* had prevail'd (not to recur to the time when all the Members of Parliament sate in one House together) the Piety and Prudence of those times thought the *State* of the Church (with all its Rights and Interest) *safe* enough among the *Nobility*, without any peculiar *Negative* voice to secure it; and yet the Bishops *Right* of *Protesting* (upon just occasion) serves very well instead of such a *Negative*.

But this *Gentleman* thinks it would be *a great Diſparagement* to the *Peerage* of *England*, that *Two Eſtates* muſt be put together, to keep the *Ballance even* with the *Houſe of Commons*, who are but *One* Eſtate; and that *their Two ſhould ſignifie no more than that One*: (taking no notice how much more they ſignifie, though they do very much,) To this I anſwer in the general, That *Numbers* of perſons add no *Right* or *Priviledge* to *a Politick Eſtate*: The *Peerage* of *England* had the ſame Power and Dignity when they were not half ſo Numerous.

But to be more particular, Experience tells us (and we have an Inſtance too freſh in memory) That neither the Biſhops *Proteſtation*, nor the Temporal Lords *Negative Voice*, nor the Kings *Le Roy S'aviſera*, are ſufficient to hold the Ballance even when the Commons depart from the Principles of Honour, Juſtice, and Loyalty. And as they never pretended to be *infallible*, ſo have they not always been obſerved to be ſo *calm* and *ſteddy* in their Proceedings, as becomes the Wiſdom and Honour of ſo Grave and Solemn a Convention. In 50 *E.* 3. they deſired, that the Lord *Latimer*, the King's *Chamberlain*, (for pretended Oppreſſion) might loſe *all his Offices, and be no longer of the King's Council*; which the King granted; yet afterwards 51 *E.* 3. at the Requeſt of the *Commons* themſelves, *he was reſtored to all, and declared innocent*. This *Gentleman* was ſo ſenſible of this their *Prejudice* and *Raſhneſs* (attended with ſo much *Levity*) that he could not paſs it by, without ſetting ſome Remark upon it, *p.* 12.

But when *Juſtice*, *Loyalty* and *Honour* governs their Debates and Reſolutions, we may put the King, and (to uſe his own Illuſtration) all *the Three Eſtates* of Parliament into the ſame *Neſt of Boxes*, and yet their reſpective *Intereſts* (which is the *Intereſt* of the whole Kingdom interwoven) will be *ſecure*, and preſerv'd inviolate.

But the *Gentleman* tells us further, That *if the Biſhops be one of the Three Eſtates, nothing can paſs in* Parliament *without them*. This may be generally true among States *coordinate*, without a *Sovereign Head* over them; and when a *Rival* is ſet up, to give *Check-mate* to the *Sovereign* Authority, as it was in the time of *Hen.* 8. mentioned by this Gentleman (at *p.* 92. when the Queſtion was [*To whom the Supream Juriſdiction did belong, to the King, or to the Pope?*] (In the time of ſuch a *Competition*, the *Crown* is obliged to ſecure it ſelf againſt ſuch an *Uſurpation*, and does moſt juſtly abandon the *Clergy* that ſides with it.

But 2. If *Acts* have paſſed without the Biſhops, they have likewiſe

likewiſe done ſo (as by ~~him~~ same is ſaid) ſometimes without the *Commons*. *Egbert*, who firſt united the Seven Kingdoms of the *Saxons*, under the common Name of *England*, he caus'd to be conven'd at *London* His *Biſhops* and *Peers* of the higheſt Rank, to adviſe upon ſome courſe againſt the *Daniſh Pyrates*, (this was a *Military* Buſineſs, and *Bloud-ſhed* might have enſued upon the Stubbornneſs of thoſe *Pyrates*) who infeſted the Sea-Coaſt of *England*. And King *Ethelwolph* in Parliament or Aſſembly of his States, at *Wincheſter*, Anno 855. by the Advice and Counſel of the *Biſhops* and *Nobility*, confirm'd unto the *Clergy* the *Tenth Part* of all mens Goods; and Ordered that the *Tythe* ſo confirmed unto them, ſhould be *free* from all *Secular Services* and *Impoſitions*. And *Wingate* in his *Abridgment*, and the Word *Parliament*, tells us, out of the *Mirrour of Juſtices*, of an Act in *Ælfred's* Time, *That Parliaments ſhould be held twice a year, and oftner if need requir'd.* But (note, ſaith he) *This was by the King and Lords only.* And I believe we may obſerve the like practice among ſome of this *Gentleman's* Precedents.

*These Great Councils were the Parliaments of those Times*, Let. P. 72.

But it is much more ſatisfactory, when the Laws are Enacted by the *Sovereign* Authority, at the *Requeſt* of the *Commons*, with the *conſent* of the Lords *Spiritual* and *Temporal*; that is, by the *King*, with the joint *Aſſent* of the *Three Eſtates* of Parliament; let us not therefore diſſolve or drive them away when we have them.

That which is alledged out of Biſhop *Jewel* and *Crompton*, I refer you to the *Anſwer* of the *Quodlibetical* Queſtion for your ſatisfaction. P. 93. to 98.

That King *James* was of this Judgment, is evident from the very Words and Speech produced by this *Gentleman* to the contrary. *The Parliament* (ſaith he) *is compoſed of a Head and a Body; The Head is the King, the Body are the Members of the Parliament: This Body again is ſubdivided into two parts; the Upper and the Lower Houſe; the Upper Houſe compounded partly of Nobility, Temporal men, who are Hereditable Counſellors to the High Court of Parliament, by the Honour of their Creation and Lands; and partly of Biſhops, Spiritual men, who are likewiſe by virtue of their Place and Dignity, Counſellors ad vitam, Life-Renters of this Court. The other Houſe is compos'd of Knights for the Shires, and Gentry and Burgeſſes for the Towns.*] Here we ſee, though the King makes but *Two Houſes*, yet he does clearly diſtinguiſh them into *Three Eſtates*, though he does not call them ſo.

To what is ſaid by *Stephen Gardiner* and *Finch*, I oppoſe the Teſtimonies of *Livy*, *Selden*, *Cooke* and *Sheppard*: To the

Expreſſions

Expreſſions of the Late *King* of B. *Memory*, in his Anſwer to the 19 *Propoſ.* (when he was fluctuating in the midſt of a Storm gathering round about him,) and to the *Declaration* of the *Commons*, 2 *H.* 4. *n.* 32. I might Anſwer, That the *Upper Houſe*, in a *large ſenſe* (conſiſting of Lords Spiritual and Temporal ſitting and voting together) may be taken for *One* Eſtate: But taken *preciſely*, and in *a ſtrict ſenſe*, as their Concerns and Intereſts are diſtinct, ſo they are clearly *Two*. But to thoſe Authorities, I ſhall rather oppoſe the Act of *Recognition*, 1 *Eliz.* 3. Where the *Lords* Spiritual and Temporal, and the *Commons* in that Parliament Aſſembled, do *Recognize* the Queens Majeſty to be their true, lawful, and undoubted Sovereign Lieged Lady and Queen in theſe words, [*We Your moſt Faithful, Loving, and Obedient Subjects, repreſenting the* Three Eſtates *of this Realm*] which evidently ſheweth the *Queen* was not (there) eſteemed one. So when the Funerals of *Hen.* 5. were ended, the *Three Eſtates* did Aſſemble and Acknowledge his Son King. To think to elude ſuch Evidence, by ſaying (as this *Gentleman* does in the like caſe) that ſuch Expreſſions are delivered *obiter*, upon the By, is to make, what we fancy not, in any *Statute*, utterly *void*, and of none effect.

The next Queſtion concerns the Biſhops *Peerage*; For the *Affirmative*, we have theſe things to ſay,

1. That the Prelates are called by the ſame *Writ* (for *Form* and *Manner*) with that directed to the *Temporal* Barons: ſo the Anſwer to the *Quodlibetical Queſtion*: That they Sit and Vote there by a *double capacity*; as *Biſhops* firſt, in reference to their ſeveral *Sees*; and ſecondly, as *Peers*, in reſpect of their *Baronies*. Hereupon they affirm to the Lords *Temporal* in Parliament holden at *Northampton Hen.* 2. as *Selden* reports, *We ſit not here as Biſhops only, but as* Barons; *we are* Barons, *and you are* Barons; *here we ſit as* Peers. And ſome *Statutes* call them Peers of the Land *in terminis*.

2. 'Tis his *Grace* of *Canterbury*'s Title, *Primus Par Angliæ*. That the *firſt* Peer ſhould be no Peer, is an unheard of Soleciſm. If he be a Peer, the reſt of the Biſhops are his *Com-peers*, what ever they are to the Lords *Temporal*. *John Stratford* Archbiſhop of that place, in the time of *Ed.* 3, claim'd this Priviledge in the Right of his *See*. And the Proteſtat. of *W. Courtney*, elſewhere mentioned, with the reſt of the Biſhops, is another pregnant Evidence to this purpoſe. And 25 *Edw.* 3. The Prelates put up this Petition to the King (as the *Gentleman* himſelf relates it, *p.* 83.) *Seeing Archbiſhops and Biſhops hold their Temporalties*

*ralties of the King* in capite, *and therefore are* Peers *of the Land as other Earls and* Barons *are, that you will be pleased to grant unto them, that no Judge may henceforward, for meer contempts, cause their* Temporalties *to be seized.* Here we have a *Prayer*, that their *Temporalties* may not be *seized*, and the *Reason* of it; because they are *Peers*, as *Earls* and *Barons* are. The King grants their *Petition*, and *allows* the Reason. The King cannot err in *Titles*; his *Allowance* therefore is a sufficient *confirmation* of their *Peerage*. And this *Gentleman*, *p.* 93, &c. when he argues against their being a *third Estate*, he tells us, *William the first erected the temporalties of Bishops into* Baronies, *to hold* in capite; *and upon account of those* Baronies, *both the* Temporal *Lords and* Spiritual *had of right place in Parliament, and were bound to serve him there. They were all* Fœdal Barons, *all holding by one tenure, and by that tenure sitting in* Parliament. And a little after he saith, *They are still qualified to be Members of* Parliament, *as before, a Baron sate as a Baron, an Earl as an Earl. Being made by Patent, or by Writ, or by holding such a proportion of Land, alters not the Case as to their sitting in* Parliament; *for it is being of such a degree which makes them* Peers *of* Parliament.] One would think this is cleer enough for the Bishops *Peerage*. But besides, either the Bishops sit in Parliament as *Peers*, or as *Commoners*: if as *Commoners*, then his own Argument, *p.* 90. will be return'd upon him; *Would it be for the Honour of the House of Lords, that Commoners must be put to them, to keep the Ballance even with the House of* Commons? *And most clearly it would be a Disparagement to the* Peerage *of the Kingdom, the Temporal Lords, and would make them to be a poor Estate, that a number of* Commoners *must be joyn'd to them, to make up their* Negative Voice, *and set them upon even ground with the House of* Commons. But the truth is, the Bishops Sit and Vote in Parliament (as we said afore) by a *double capacity*; as *Bishops*, first, in reference to their several *Sees*; and secondly, as *Peers*, in regard of their *Baronies*. All the Lords are *equal* in respect of their *Peerage*, and so they make up but *one House*; but they are distinguish'd by their *Nobility* and *Spirituality* respectively, and so they make up *two Estates* distinct and different.

But to prove that they are no *Peers*, this *Gentleman* fetches an Argument from *Magna Charta* it self, I know it saith, *Every man that is tried at the King's Suit, must be tried by his* Peers, whether he be *Amerced*, or *Imprisoned*, or *Disseised*, or *Outlaw'd*, &c. it must be *by his* Peers. But this Argument makes clear against him; for he himself informs us, *p.* 11, 12. that the Lord *Latimer*, who was the King's *Chamberlain*, for Oppression in several *Pag.* 85. *Cap.* 14, & 29.

veral places in *Britain*, and in *England*, was by the *Biſhops* and *Lords* adjudged to be *impriſoned*, and put to *Fine* and *Ranſom*; and the Lord *John Nevil*, a *Privy Counſellor*, for buying ſome Debts due by the King, at eaſie Rates, to make advantage to himſelf: He mentions ſome *others*, and concludes, *At all theſe Trials the Biſhops were preſent, and no body ſayes but they might*: which makes it evident (if the Law of *Magna Charta* were obſerved) that the Biſhops ſate as *Peers* in giving Judgment upon thoſe *Culprit*-Lords.

But for all this, the *Gentleman* hath a very ſtrong Objection out of *Magna Charta* againſt the Biſhops *Peerage*; and 'tis this, *Ibid.* 85. If any Biſhop be tried for any *Capital* Offence, he is tried by the *Commoners*, and that is the *Common Law* and *Practice* of the Land; then (ſaith he) muſt *Commoners* be his *Peers*, and *he* *p.* 85. and *Commoners* muſt be *Pares*. A *Temporal Lord, Duke, Earl* or *Baron cannot be Judge in the caſe of a Biſhop*, (*out of Parliament*) *nor can any Biſhop be their Judge, how then can they be ſaid to be* Pares, Fellow-Peers? *For my part* (ſaith he) *I ſee not*. But I will undertake to read the Riddle to him: the King may *reſtrain* his *Favours*, and *limit* his *Grants* as himſelf pleaſeth: the Dignities and Priviledges of the Lords Spiritual are not *Hereditary* like thoſe of the Lords Temporal, but only *Perſonal*, and conferr'd upon them in regard of their *Holy Function*. Hereupon, when they are *impeached* for any *heinous* Crime, which is ſuppoſed to *deſecrate* their perſons, they are *interpretatively* (though not *formally*) *degraded* *, and by a *Fiction of Law* (not *unuſual*) *dead* in that capacity, *diveſted of their* Peerage *with their Spiritualities*, and ſo (being in the ſenſe of the Law reduced to that condition) they come to be tried as *Commoners*. And thus much for the Biſhops *Peerage*.

* *Privilegium perſonale amittitur, extincta perſona cui id conceſſum eſt.* And ſuch perſons are reputed dead in Law.

3. For their *Right* to Sit as Judges in *Caſes Capital*, as this *Gentleman* ſaith, *p.* 3. *It deſerves a ſtrict enquiry, and we ſhould do well to conſider upon what ground the* Prelates *were prohibited having Votes in Caſes of Blood*. Such a Prohibition indeed is extant; but it is Authentical only in the *Canon Law*, as we ſhall evince anon: but this Law is *Popiſh*, grounded upon Principles of *Superſtition*, *Uſurpation*, and *Papal Tyranny*; and is very *irrational* and *uncharitable*, according to the uſual practice of it. This I doubt not to make appear to the unprejudiced and impartial Reader.

In the Interim, I think to remove a great miſtake of this *Gentleman*, who tells us, that *Mat. Paris* a *Monk*, *one that would* *Let. p.* 73. *not be partial for the Lords Temporal in relating matters, to give them*

*more*

*more power in Judicature, and less to the Lords Spiritual, than of right belonged to each, and looking upon this exclusion of the Prelates from the power of Judging in such cases, to be some diminution of their Omnipotency, which they were so ambitious of, he therefore ranks it amongst the* Consuetudines iniquas, *the wicked Customs of the former times.* I say, herein the *Gentleman* has committed a great *mistake.* 'Tis true, their *presence* in Parliaments, at such *Debates* was debarr'd, and the restraint was put upon them by *this* Law, and none else: but so far were the *Clergie* of those times from ranking this *Canon-Laws* amongst those *wicked Customs*, that indeed they had it in too high a *veneration*; and *this* the *Gentleman* himself observes in divers places of his Letters, averring it to be *that Law, to which only the Clergy of those times would be subject, conceiving themselves above, and not bound by any other.* p. 68. And some Laws before that, p. 22. He confesseth, *The Canon Law was to them above all Laws, and what was forbidden by that Law, they could not have a thought that it could in any sort be Lawful for them to challenge, as their right upon any account.* This *Gentleman* knew, they did look upon it as *sacred*: They *appeal* to it, and *plead* it for their *exemption*; and this he sets down with his own Hand (at p. 20.) in these words: *Quia in præsenti Parliamento agitur de nonnullis materiis in quibus non licet nobis alicui eorum juxta sacrorum Canonum instituta, quomodo libet personaliter interesse:* Because in this present Parliament *some things are to be transacted, at which it is not lawful for us, by the Decrees of the Holy Canons to be personally present:* This is the ground and reason of their protestation. The *wicked Customs* therefore which that *Monk* inveighs against, and which cost *Becket* so severe a Penance, must be sought for elsewhere, amongst the *rest* of those *Sixteen Constitutions* of *Clarendon.*

But whatever Opinion the *Clergy* of those times had of this *Canon*, I doubt not to make it evident that it is grounded upon Principles of *Superstition*, for as the Reverend *Davenant* hath it, *Quid impium, quid illicitum? What is in it that is impious, What that is unlawful, What that is contrary to the Office or Sacredness of a Priest where there is a just authority for it, to bridle and restrain such as are notoriously wicked, and disturbers of the Christian Common-wealth, by civil penalties, and corporal inflictions? The Angels of Heaven think it no way disagreeable, at Gods command, to inflict corporal punishments upon the wicked. And why should the Angels of the Church at the appointment of the King, who is Gods Image upon Earth, think it unlawful to adjudge the same wicked persons to deserve punishment? The Act and Exercise of civil Jurisdiction of its own nature is not disagreeable* Determ. 11.

to

*to the most holy person, nor any way opposite to the Sacerdotal Function. We have the Authority of God himself in the practice of his most Ancient Church, to justifie this Jurisdiction. Under the Law God himself joyn'd it to the Sacerdotal Office; it is not strange therefore, nor forbidden by Divine Law, that the Priest should obtain a Civil Jurisdiction. We find it exemplified in* Eli *and* Samuel, *and the* Maccabees, *and all that were invested with the Office of* High Priest. This could not be expected amongst the *Apostles*, because then the *Civil Magistrates* were not *Christians*; yet S. *Peter* had once a supply of *Civil Authority* by a *Miracle*; and to shew that it was not *unlawful* for an Apostle to give Sentence in *Cases Capital*, He pronounc'd *Saphira's* Doom for *Sacriledge* and *Lying*, Acts 5. 9. *Behold the feet of them which buried thy Husband, are at the Door, and shall carry thee out.* But these *New* Masters of *Israel* were afraid a *Sentence* of Justice should defile them with the *Blood* of a Malefactor; like the *Priests* and *Elders* among the *Jews*, John 18. 28. when they had bought and sold the Life of our Blessed Lord, and used all the Tricks that Craft and Malice could suborn to destroy him; so *precise* they were for all that, they would not go into *Pilates* Judgment Hall, least they should be *defiled* and unfit *to eat the Passover*. 'Twas the *Superstition* of those Men, to think they could render the Priests *Office* more *Sacred*, and put more veneration upon his person, then Gods own Institution had done. They would not have him interess or concern himself in *a Case of Blood*; least it should *desecrate* and *unhallow* his Person, and *stain* his *Function*. But we know that all Virtue is *Ornamental*; and 'tis as well an *Act of Justice*, to condemn the *Guilty*, as to acquit the *Innocent*.

*See* Numb. 25. 7, 13.

2. Here is *Usurpation* in this *Canon*, and it is flatly against the King's *Supremacy*. By this means a *Foreign* Power restrains the *Sovereign Authority* of the Kingdom from commanding the Service, or making use of the Duty of his Subjects in such Cases. The Force of this *Canon* divided the *Prelates* of those times between the *Prince* and the *Pope*; either they did not understand, or they did wilfully neglect their Duty; and some Instances of the mischievous effects hereof this *Gentleman* gives us in his Letter. He tells us, *p.* 7, 8. 5 *E.* 3. *The Parliament was declared to be called for the redress of the* Breach *of the Laws, and of the Peace of the Kingdom. And because the* Prelates *were of opinion, that it belonged not properly to them to give counsel about keeping the Peace, nor punishing such Evils, they went away by themselves, and they returned no more.* Nor did their Disobedience

stop

ſtop here; but the *Gentleman* tells us further, at *p.* 96. That 20 R. 2. "the Biſhops upon occaſion of the Statute of Prov-
"ſors, enter a Proteſtation againſt whatſoever ſhould be
"done in derogation or reſtriction of the Power of their Ho-
"ly Father the Pope, ſaying, they were ſworn to his Holineſs,
"and to the Court of *Rome*. Theſe, and the like Inſolencies were the Fruits of thoſe *Immunities* which the *Prelates* of *thoſe* times received by the *Decrees* of thoſe *Holy Canons*.

And as *this* Canon was grounded upon *Superſtition*, and did *confront* the Kings *Supremacy*, ſo the Practice of it (in thoſe times) was *irrational* and *uncharitable*.

Firſt *Irrational*; for, 1. Why were the *Prelates* debarr'd the liberty of ſitting Judges in ſuch Caſes? Was it becauſe they wanted Knowledge, Reaſon, or Diſcretion? I ſuppoſe not: If it were not becauſe they had *too little*, but *too much* of theſe Qualifications: That was *Irrational*.

2. That the *Prelates* have been, and may be Judges of *Miſdemeanors*, this *Gentleman* does grant, at *p.* 18. But there may be an *Impeachment* for ſundry *Offences* under the name of *Treaſon*, which really, according to the *Rule* of Law, are no more than *Miſdemeanors*. Why may not the Biſhops ſit as Judges *in ſuch Caſes*? Muſt the *Culprit* be delivered up to *Juſtice* upon ſuch *Impeachments*, without any further *Trial* or *Examination*, what will it amount unto? This would be a kind of *Halliſax*-Law; and that's *Irrational*.

3. In the Caſe of Sir *John Oldcaſtle*, this *Gentleman* tells us, *Pag.* 38, 39.
"The Popiſh *Biſhops* did excommunicate and condemn him
"for an Heretick, and ſo turn'd him over to the Secular Judg-
"ment (*for execution*) yet certainly (*ſaith this* Gentlem. *p.* 39.) thoſe
"good men, I mean thoſe Popiſh Biſhops would have no more
"to do with him, as to his further Execution, that the World
"might ſee they were not men of Blood. So that 'tis pretended at leaſt, that this *Holy Canon* (as they call it) was deſign'd for Caution, that the *Prelates* might have no *hand in Blood*; and yet the practice is ſo *irrational*, it does not ſufficiently prevent it. For in their *Legiſlative capacity*, this *Gentleman* grants, *p.* 3. that they may *Sit*, and *Vote*, and paſs *Bills* of *Attainder* *. And, *p.* 104. "Acts of Attainder are Laws, and every Freeman
"is ſuppoſed to give his conſent to every Law, either by his
"Repreſentative, or in perſon, if a Member of Parliament;
"and Biſhops being Members, may, I think (*ſaith he*)
"claim to do it perſonally. And though there be a great ſtir about ſuch things as are *preliminary*, and *preparatory* to

* *He ſaith p.* 31 *the E. of* Straffords *Trial was compleated that way.*

Let. p. 71. Condemnation; yet the *Constitutions* of *Clarendon* enjoyned them to attend the Court *quousque perveniatur ad diminutionem Membrorum, vel ad Mortem*; till it comes *to loss of Life or Member* (which the *Lawyers* understand to be the Sentence of *Guilty* or *Not Guilty*.) Now I would fain be resolved, whether *these proceedings* be not *in agitatione causæ sanguinis*? whether accoording to this practice a *Case of* Blood be not all the while in *agitation*? And then reflecting upon the *Gentlemans* Rule in *Logick*, *Causa causæ est causa causati*, and upon the Story of *Chaucer's* Frier, let the Reader please to peruse *p.* 64, 65, 66, of the *Letter*, and then judge whether the practice be not, (as I said) *Irrational*. And then,

p. 1.

Secondly, This practice of those *Popish* times was *uncharitable*; for if the Bishops were debarr'd sitting as Judges in such *Cases Capital*, out of a *suspition* of their *Integrity*, it was *uncharitable* to the Bishops; if out of a jealousie they might be too *soft* and *yielding* in their clemency, it were *uncharitable* to the *Delinquent*; if out of *fear* they might be too *severe* in point of Justice, it is *uncharitable* to the *Commonwealth*; for Discretion ought to take her Rules from Charity, when *Pity*, and when *Severity* are to be used for the advantage of the Publick. Sometimes *Justice* may be provoked into *Severity*, and when *Impeachments* are preferr'd with *rigour*, 'tis possible the *Prudence* and *Piety* of such grave and holy persons intervening, a *rash* and *unadvisable* Sentence may be stopt and prevent a Deluge of Mischiefs, which might otherwise ensue. † Had the Bishops been present at *Haxeye's* Trial, they might as well have prevented his Condemnation, as obtained his Pardon.

† *See the Case, p. 26, 27, 28. of the Letter.*

The *Canon-Law* then gave the first *rise* and *beginning* to this Usage (as this *Gentleman* seems to acknowledge, *p.* 68.) But the Ground of that *Canon* was *Superstition*, and it did *confront* the Kings *Supremacy*, and was *irrational* and *uncharitable* in the practice of it: Let us therefore examine what *Force* it had, and by what *Authority*. That this was in use while the *Pope* had a *concurrent Jurisdiction* here, cannot be denied; but whether ever it received a *Civil Sanction*, and an *express Ratification*, and had *the stamp of Parliament-Authority set upon it*, is the matter now in question. And this I do stedfastly deny, and the *Gentleman* as earnestly affirm and contend for.

To prove this, he does alledge a *double confirmation*, and to give it the more *Credit*, he carries it up as high as the dayes of *Edward* the Confessor. But I desire the Reader to observe, that in the management of his Evidence, he turns an *Indul-*

*gence*

*gence* into a *Prohibition*; a *Priviledge* into a *compleat Act* of Parliament; and a *Proteſtation* into a *Statute*.

He does alledge the *Year-Book* of 10 *E.* 4. *Term. Paſch. n.* 35. *Let. p.* 78. Where we have ſet down the manner of their *Trials* in Parliament; [ 'When a Lord is indicted, &c. he ſhall plead *Not* 'Guilty, and this ſhall be tried by his Peers; and then the 'Lords Spiritual, *who may not conſent to the Death of any man*, ſhall 'make their *Proctor*, &c. This (*ſaith he*) I alledge, to ſhew 'that even by the Law of the Land, the Biſhops cannot be 'Judges in a Caſe Capital.] Here the *Gentleman* ſays, *Their making a* Proctor, *was* Error Temporis; *the Error of thoſe Times.* Why? Becauſe that practiſe was not for his purpoſe. But, if, by the *Law of the Land*, he means the *Statute-Law* (as he ſeems to do) I muſt have a *Writ of Error*, to *reverſe* his Judgment. For the *Pope* having then a *concurrent Juriſdiction* here in *England*, the *Canon-Law* was in *force* amongſt them; and in declaring that *the Lords Spiritual might not conſent to the Death of any man*, they have reſpect to the *Prohibition* of the *Canon-Law*, but this is not any the *leaſt confirmation* of it.

But this *Gentleman* will needs have it confirmed by a *Civil Sanction*, and ſo become the Law of the Kingdom.

The *firſt Confirmation*, he ſaith, was about the time of 10 *H.* 2. amongſt the *ſixteen Conſtitutions of* Clarendon, *which* (beſides the Authority of Parliament (to make the Obſervation of them the more inviolable) 'were eſtabliſhed by the Solemnity 'of an Oath, which is the greateſt Obligation that Mankind 'is capable of, making even God a Party to it, to ſee it obey- 'ed, and puniſh the Tranſgreſſors. Here is a fair *Plea* for a ſolemn *Confirmation*, if the *Gentleman* were not *partial* or *miſtaken* in the Buſineſs. But the Caſe was this, upon the account of their *Immunities*, the *Prelates* eſpecially grew very *remiſs* and *careleſs* of their Duties (as was noted formerly.) Hereupon, in that *Great Council* (*which was then their Parliament*) *amongſt the reſt*, the King made this, (the 11th. of thoſe Conſtitutions,) 'The Archbiſhops, Biſhops, *& univerſæ perſonæ Regni*, (not all the *Dignified Clergy* of the Land, as this *Gentleman* renders it, but) 'all perſons whatſoever, who have a Tenure *in* 'capite, ſhall hold their poſſeſſions from the King as a *Barony*, 'and ſhall anſwer for their Eſtates unto the Kings Juſtices 'and Miniſters, and ſhall obſerve and obey all the Kings 'Laws; and together with other Barons they are to be pre- 'ſent in all Judgments in the Kings Courts. [This is the *Duty* they are obliged and ſolemnly ſworn to; and then follows *p.* 69, &c. *p.* 72. *p.* 71.

lows an *Indulgence* or *Priviledge*] till the Sentence comes *to the loss of Life or Member*; and here they are left to their *Liberty* to
p. 73. obſerve the *Decree* of the *Holy Canon*. Hereupon *we may build our Faith, that there was* really *ſuch an Uſage* (as this *Gentleman* infers) *in ancient times, and that a liberty* was left to continue it (according to the *Canon*, and in veneration of it) but that 'twas *ratified* and *confirmed*, we have not one Syllable to prove it.

p. 18, &c. 71, &c. The Second *Confirmation* this *Gentleman* finds, was in 11 *R.* 2. upon the *Proteſtation* of the *Archbiſhop*, for himſelf and the other Biſhops. And here (after ſome *fluctuation* and *unſteadineſs*) *p.* 75. to make it a *Law*, he tells us, "The ſubject mat-"ter enacted did conſiſt of two Particulars; the one, That "the Prelates had a Right to ſit and vote in all other Buſineſſes; *the other*, "That they had no Right, nor was it lawful for them "to be preſent in Parliament, when ſuch Buſineſſes were in "queſtion: *But the* Tenour *of their Proteſtation is*, "That "they intend to be preſent, to conſult, to treat of, and to "determine, *in omnibus*, in all things, ſaving their Rights, "their State and Dignity. *But becauſe* ſome things were to "be tranſacted in that Parliament, at which, by the Decrees "of the Sacred Canons, it was not lawful for them to be per-"ſonally preſent, therefore they proteſted, that while ſuch "things were in agitation, they would abſent themſelves. "Which Proteſtation, being read in Full Parliament, at the "inſtance and prayer of the Archbiſhop and other Prelates, "was entred upon the Parliament-Roll, by the Kings Com-"mand, with the Aſſent of the Lords Temporal and Com-"mons. This, the *Gentleman* will needs contend to be a *Law* of Parliament, (or a *Law of the Land.*) Why? Becauſe it was *entred in the Roll or Journal-Book*, that ſuch a thing was *agreed upon by the King and Two Houſes*; "Which (ſaith he)
p. 23. "was all the Formality of paſſing Laws in Parliament, in "thoſe times. But what was it that the Biſhops petitioned might be *entred* upon the *Parliament-Roll*? Was it the *Decree* of the *Sacred Canons*, which debarr'd their preſence in the *Houſe* at ſuch Debates? *That* indeed had been ſomewhat to the purpoſe: but here was no ſuch matter deſired; it was their *Proteſtation*: and if every thing that is *entred* upon the *Parliament-Roll* by the *Agreement* of the King and the Two Houſes, becomes *an Act of Parliament* forthwith, then let this *Proteſtation*, for the *preſent*, paſs for an *Act* of Parliament; and we ſhall ſee anon what it will amount to.

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In the Interim let us return to the *Constitutions* of *Clarendon*, where there seems to be most colour for such a Confirmation. There we may observe *Two* things in that 11th. *Constitution*, *a Duty enjoyned*, the Prelates *attendance at the Kings Courts*; and then a *Liberty* or *Priviledge* indulged; *That they may withdraw and forbear that attendance, when it comes to sentence for loss of Life or Member.* That *this* is a *Priviledge* or a *Liberty*, cannot be denyed. *Mat. Paris* reckons it *inter Libertates*, amongst the *Ancient Liberties* *; and this *Gentleman* could not chuse but observe it, (though it was not for his purpose to distinguish this *Priviledge* from the *Injunction*) "One would think (saith he) they (*the* "*Bishops*) might look upon (*it*) as a Right and Priviledge, to "be exempt from being obliged to attend in such Cases, Cases "of Blood. If a *Priviledge*, then I may *use* or I may *forbear* it. To say, I *may* do such a thing, therefore I *shall* do it, is *irrational*; ill *Logick*, and worse *Polity*. *Priviledges*, say the *Lawyers*, are *Franchises* and *Liberties*, or *Immunities* granted to a *Person*, an *Office*, or a *Corporation*. Such as have them, may either *enjoy* or *refuse* them. It is the *Priviledge* of *Attorneys* and *Clerks* in they *Kings* Bench, they cannot *be prest for Soldiers*, they cannot be *compell'd to bear Offices in their Parishes*; yet *Volunteers* they may be in both Cases. No man should be *compell'd* to use his *Priviledge*; for then his *Franchise* would be no *Liberty*, but the more *inthrall* him. We may observe accordingly, that the *Prelates* very well understood this their *Liberty*; for sometimes they would *use* their Priviledge, *absent* themselves, when *Cases Capital* were upon *Trial*, and *withdraw*, when Matters of *Blood* were in agitation; and this is obvious to every eye in the perusal of the *Gentlemans* Letters. But many times (which is very considerable in the Case) when they did *withdraw*, they either made a *Proxy* to represent them, or entered their *Protestation* to preserve their *Rights*. 'Tis true, the *Gentleman* does except against their way of *Proxy's*, as *Unparliamentary*; and *three* or *four* Exceptions he hath, which are sufficient to *elude* any Testimony: For either it is *Error Temporis*, an Errour of those times; or spoken *obiter*, upon the By, and of no importance; or it is *unparliamentary* and extravagant, or else *Repealed*: Such a provision of *Evasions* as may serve to help a man out of the *Noose* of any Argument that can be produced in Matters of this Nature.

* Let. p. 71.

For the *Protestation*, he would *elude* the *force* of that, by saying, "Their *Salvo*, that which they would ensure to them- p. 21.
"selves, is their Right of sitting to consult, treat of, and de-

"termine in that, and all other Parliaments, when Capital "Caſes are not in queſtion: but there was no need of a *Proteſtation* to this effect: This was their *Duty*, to which the *Clarendon Conſtitution*, and *a Solemn Oath* obliged them. When men proteſt a *Right*, 'tis not to be underſtood of *that* Right which no man doubts of, and therefore is not liable to queſtion; but of *that Right* which they give ſome *colour* to be *queſtion'd*, becauſe they *decline* and *forbear* the *uſe* and *practice* of it: *This* was a *Right* to *debate*, *vote* and *ſit* as *Judges* in *Caſes Capital*, if poſſibly the *Decree* of that *Canon* ſhould come to be *null* (as now it is) or *altered*.

I muſt not forget to tell you of *two Rules* obſervable about ſuch *Priviledges* as are granted to Subjects by the King, as this of the *Clarendon Conſtitution* was to the *Prelates*. The firſt is, That *they are not to be underſtood to debar the Kings Commands*, nor ought to be a *Superſedeas* to his *Sovereign Authority*, for this were a *derogation* to his *Royal Office*, a diminution to his *Crown and Dignity*; not to be granted by him upon any pretence whatſoever. By the Conſtitutions of *Clarendon*, the King did *exempt* the Biſhops from *attending* his Court of Parliament at *ſuch Trials* in *Capital Caſes* in general; but he did not *abſolve* them from their *Duty* and *Obedience* to his own *ſpecial commands*, upon any juſt occaſion. Hereupon in the 11th. *Hen.* 2. Archbiſhop *Becket*, in a *Solemn* Council at *Northampton*, being accuſed of *Treaſon*, and other Miſdemeanors, where *Biſhops* were his *Judges*, as well as *Temporal* Lords; when thoſe *Lords* and *Biſhops could not agree about pronouncing the Judgment*, *they putting it off from one to the other*; at laſt *the King commanded* the Biſhop of *Wincheſter* to *do it*. This hapned *ſoon after* the *Ratification* of the *Clarendon Conſtitutions*, which all the Lords and Biſhops had taken their *corporal Oath* to obſerve for ever: And it is not to be imagined they could forget what had been ſo *lately* done amongſt them; wherefore we muſt conclude that *they* did not take themſelves to be obliged either by that *Oath* or Conſtitution, to *abſent* themſelves *alwayes* from *ſuch* Trials; for though the Conſtitution ſaith, *Debent intereſſe judiciis curiæ Regis, ſicut cæteri Barones*; "That they ought, as well as other Barons, to at-"tend all the Judgments of the Kings Court; *quouſque perve-"niatur ad diminutionem membrorum, vel ad mortem*; till the Matter "comes to Sentence, for the loſs of Life or Member.

Yet (whatſoever *William* Lord Archbiſhop of *Canterbury*, and the reſt of the Biſhops had ſaid in their *Proteſtation*, 11 *R.* 2.) The *Conſtitution* of *Clarendon* doth not ſay, *Debent ſe abſentare*, that

that the Biſhops *ought to withdraw and abſent themſelves* from ſuch Sentence. This *Gentleman* endeavours to *invalidate* this ſo pregnant an Evidence, becauſe it is taken out of a *Manuſcript* made by the Monk *Stephanides*; and none of the *Ancient Hiſtorians* of thoſe times ſay any thing of *Becket's* being *accuſed for Treaſon*. But I muſt tell you, 'tis not the *Print* that adds *Truth* or *Authority* to any Writing; and I ſhall truſt Mr. *Selden's* Judgment, rather than this *Gentlemans* Conjectures: Beſides, *A Negative Argument from Authority* is of no force; for why do we read variety of *Hiſtorians* upon the ſame Subject; but becauſe we ſuppoſe what one fails in for want of Memory or Information, another may ſupply by a better Diligence and Enquiry. p. 60, 61.

The *Second Rule* obſervable in matters of *Priviledge*, is this, *Privilegia omnia ſine prejudicio Tertii concedenda & conceſſa intelligenda ſunt*; "We muſt underſtand all priviledges that are granted, "to be granted without any prejudice to any third perſon. Now this *Gentleman* quotes *Brompton's* Chronicle, reciting among the Laws of King *Athelſtan*, this concerning Biſhops; *Debent Epiſcopi cum ſeculi Judicibus intereſſe Judiciis, ne permittant, ſi poſſint, ut aliqua pravitatum germina pullulaverint*; "The Biſhops "ought to be preſent in Judgments with the Secular Judges, "not to ſuffer any Buds of wickedneſs to ſprout up if they can "hinder it. And does not the Law of God oblige ſuch as are in Authority, to uſe their Power as well to *reſcue* the oppreſſed, as to *puniſh* evil doers? Let us conſult the wiſe man, *Prov.* 24. 11, 12. *If thou forbear to deliver them that are drawn unto death, and thoſe that are ready to be ſlain; if thou ſaiſt, Behold we knew it not; doth not he that pondereth the Heart conſider it? and he that keepeth thy Soul, doth not he know it? and ſhall not he render to every man according to his works?* This, ſaith the Author of the *Synopſis*, concerns eſpecially ſuch as are in *Authority*: And (as Dr. *Tho. Cartwright* comments upon the place) *Quamvis periculum certum non ſit, ſi tamen ſuſpitio aliqua mortis imminentis juſta ſubſit, non eſt cunctandum, donec morti quis adjudicatus fuerit; facilior enim eſt Liberatio, dum exitus adhuc dubius eſt, quam cum lata eſt Mortis ſententia*: And I muſt not omit what the ſame Author ſaith a little after; *Quemadmodum autem inſontes, ſi poſſis, non liberare; ſic maleficorum, quantum in te eſt ſupplicium non promovere, atrox flagitium eſt*: and for this, the ſaid *Cartwright* quotes the ſame *Solomon*, Prov. 17.15. This is a matter of ſo great importance, every man who has a *Right* and *Power* of Judicature, ought eſpecially to conſider it. And if this *Gentleman* be as ſincere in his Profeſſion towards the Biſhops (which I have no reaſon to queſtion) as he p. 108.

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is just and modest in saying, that *he does not envy them their Honour*. I hope he will be so ingenuous also, as not to *deny* the *King* their *faithful counsel*, nor the Countrey their *pious Aid* and *Service*.

* *This Task therefore is faln into more able hand.*

For the Body of his Epistle, it consists of *Record* and *Precedents*, which most men want means and *opportunity* to examine *, and very many *skill* to construe and comment on: This is the Evidence which this *Gentleman* does produce, and that it may be the better understood, I shall lay down some undoubted *Principles*, *Rules* and *Observations*, that the Reader may the better judge of it. And I shall observe,

1. The Lords *Spiritual*, being *Barons*, *Peers*, and *Great men*, they are many times comprehended under *these Titles*, when they are not stiled by their *proper* and *distinctive* Names of *Bishops* or *Prelates*. I shall need to instance in no more than that of *Magnates*, Great men. In the Reign of *Edrid* (948) we read thus, *In Festo Nativitatis B. Mariæ, cum universi Magnates Regni per Regium edictum summoniti, tam Archiepiscopi, & Episcopi, quam cæteri totius Regni Proceres, & Optimates* Londini, *&c.*

*Here Archbishops and Bishops are* Magnates *as well as others.*

2. *A Negative Argument from Authority is of no validity*, v. g. Such a Writer does not report such a thing; therefore there was no such Matter: this does not follow.

3. *The practice* of *Ancient* times, in the *case* before us, was very *variable*: For they were under the *Popes* Jurisdiction, *who* kept the *Canon-Law* in force; and among the rest, this *Canon* touching the Bishops *Recess* from all *Trials* in *Cases capital*. In obedience to which *Canon* they did, for the most part, *absent* themselves. But when *H.* 2. by the *Constitution* of *Clarendon* enjoyned all *Prelates*, as well as other *Barons*, to attend his Courts, he granted them withal a *Liberty* or *Priviledge* to *absent* themselves (if they should think good) from *Trials* of *that* nature: Hereupon *they* did *sometimes* use their Priviledge, and *absented* themselves; *sometimes* they did *refuse* their Priviledge, and *sate* as Judges.

4. We may observe how the Matter was carried, running through all the *Trials* upon *Record*, as this *Gentleman* gives account of them †, and in *his* Method.

† *With what care and fidelity is left to others to examine and make report.*

1. The first is 4 *E.* 3. in *Mortimers* Case; where we have *Earls*, *Barons*, the *Peers*; afterwards, *Earls*, *Barons* and *Peers*: the Bishops may be comprehended under either Title of *Barons* or *Peers*; for they were both.

5 *E.* 3. The Bishops *would* not understand their *Duty* at all: they would neither *keep the peace*, nor *punish* a *Battery*. This was

*a Tu-*

*a ſtupid Neglect*; but ſignifies nothing to the deciding of the Controverſie.

3. 25 *E.* 3. The Biſhops may be comprehended under the Name of *Grantz*, *Magnates*, the *Great* men.

4. 42 *E.* 3. Here the Biſhops were preſent by their title of *Prelates*.

5. 50 *E.* 3. The Biſhops were *preſent* at theſe *Trials*, yet *two* of the Delinquents were *Lords*.

6. 1 *R.* 2. They *were*, and they *were not* preſent; the Caſe is *doubtful*.

7. 3 *R.* 2. If the Biſhops were *not* preſent, 'tis conſeſt they *might* have been; for what was done, was done by the *Legiſlative Power*, and in *that capacity* to paſs *Bills* of *Attainder*, the *Gentleman* grants they have a *Right*.

8. 4 *R.* 2. If the Biſhops be *Peers* of the *Realm*, and *Lords* of Parliament, they might be comprehended there. To ſay they are always expreſt by the *Name* of *Prelates*, is to *beg* the Queſtion.

9. 7 *R.* 3. It ſeems the Lords *Spiritual* were *abſent*.

10. 10 R. 2. Here the Biſhops were *preſent*, and *judged* of *Miſdemeanors*, which (for ought we know) upon *Trial*, might have amounted to *Merit* of Death.

11, 11 R. 2. The Biſhops were *virtually* preſent by their *Proteſtation*.

12. 20 R. 2. *Thomas Haxey* Clerk (whether he was a Member of the Houſe may be a queſtion) but his fault (however aggravated) ſeems to be but a *Miſdemeanor*, at the *Trial* whereof, the Biſhops had *right* undoubtedly to be preſent; whether they were preſent, ſeems *doubtful*: but 'tis moſt certain it had been more *ſafe* and *charitable* to prevent the Condemnation, than to run the hazard of an *After-Game*, when he was condemn'd, to ſeek his Pardon.

13. 21 R. 2. In this Parliament, the Biſhops were preſent by their *Repreſentative*, by *Proxy*, and that *three* ſeveral times, upon *three* ſeveral Occaſions.

14. 1 *H.* 4. Here they were *preſent*, but gave no Judgment.

15. 2 *H.* 4. It does not *appear* that the Biſhops were preſent.

16. 5 *H.* 4. The Biſhops may be comprehended under the title of *Peers*, and the Matter being found but a *Treſpaſs*, their *right* of Sitting, the *Gentleman* cannot deny them.

17. 7 *H.* 4. Here the King *commanded* the Advice *only* of the Lords *Temporal*, which was a *ſpecial* Caſe.

18. 5 *H.* 5. Here the Biſhops had declared Sr. *John Old-caſtle* Heretick, and delivered the Priſoner over to the *Secular* Power; and yet in the Sentence, they may be comprized under the Title of *The moſt wiſe Lords of this preſent Parliament.*

19. 2 *H.* 6. It is not *certain* the Biſhops did *Vote.*

20. 28 *H.* 6. The *two* Archbiſhops and 13 Biſhops were *preſent*, did *Debate* and *Vote* in the Caſe.

21. 31 *H.* 6. The Biſhops doubtleſs (as well as in the 28) were *preſent*, being *Peers* of the Realm, as I have proved.

22. 38 *H.* 6. The *Commons* did accuſe; the King anſwered, *He would be adviſed*; and ſo the Matter ended.

Here we have 22 Precedents cited by this *Gentleman*, from the time of *Clarendon Conſtitutions* to the Trial of the E. of *Straſford*; whereof *one* is a *ſpecial* Caſe; *three* are inſignificant and *null*, in regard there was either *nothing* at all done, or a *ſtupid neglect* of their *Right*, or a careleſs throwing off of all *Duty*. *Four* are doubtful; *Ten* are for their *preſence* at *ſuch* Trials, either in *perſon* under the Names and Titles of *Biſhops*, *Prelates*, *Peers*, *Great men*, or *Lords of Parliament*; or preſent *virtually*, by their *Proxies*, or their *Proteſtations*; ſo that there are but *four* of all the 22, for their *not appearing*, or *not voting* at *ſuch* Trials.

5. For a *Superſedeas* to all further enquiry or diſpute about this matter, we muſt take notice that the *Canon* which required the Biſhops to *withdraw* at all Trials in *Caſes Capital*, is *aboliſh'd*, and the Lords *Spiritual* are under no obligation to obſerve it. To ſay the *Civil Sanction* does ſtill *enforce* it, is abſurd; for what is that *Civil Sanction* but an *Act of Parliament*? and if an *Act* of Parliament hath *aboliſht* it, it has likewiſe aboliſht all other Acts, which might ſeem to *ratifie* and *confirm* it; otherwiſe it ſhould be *aboliſht*, and *not aboliſht*, taken away, and yet in force ſtill; which are Contradictions, and abſurd.

The *Gentleman* takes notice of this to be the Biſhops *Plea*, (p. 67, 68.) *That it is only by the Canon Law that this reſtraint is upon them, and that the forbearance of their* Predeceſſors *being* Papiſts, *and ſo ſubject to that Law, was only in that reſpect; which Law being of no force at preſent, and taken away by Act of* Parliament, *they are now at liberty, though in Modeſty they think fit ſometimes to withdraw, but have a Right to continue ſitting if they pleaſe.*

What does the *Gentleman* anſwer to *this*? He ſaith, *I do not deny but the Canon Law might give the firſt riſe to ſuch an Uſage; but*

*it*

*it came afterward to receive a civil Sanction, the ſtamp of Parliament-Authority, and ſeveral confirmations*, ibid. But I have evinced already that his *Allegations* do not prove what he pretends to undertake; and the *practice* of the Biſhops *withdrawing* at ſuch *Trials*, having no other *bottom* to relie on than the *Canon Law*, *That* being abſolutely diſſolved and broken by *Act* of Parliament, cannot now ſupport it.

6. And laſtly, Seeing there is no *other* Authority to *continue* and *inure* this practice but that *Popiſh Canon*, I ſhould think it a very dangerous thing (if the King ſhould be ſevere) for any perſon to attempt it; for upon the Clergies *ſubmiſſion* to the King 25 *H.* 8. 19. the *Statute* ſaith thus, [*Be it therefore now enacted by Authority of this preſent Parliament, according to the ſaid ſubmiſſion and petition of the ſaid Clergy, that they nor any of them, from henceforth ſhall preſume to attempt, alledge, claim or put in ure any Conſtitutions or Ordinances, Provincials or Synodals, or any other Canons, unleſs the ſame Clergy may have the Kings moſt Royal Aſſent and Licence——upon pain of every one of the ſame Clergy, doing contrary to this Act, and being thereof convict, to ſuffer impriſonment, and make fine at the Kings Will.*

After *thoſe* Precedents above-mentioned, the next the *Gentleman* meets with, was the Earl of *Straffords*, whoſe *Trial* in Parliament was *compleated* in *a Judicial way*; but he was *attainted* and *condemned* by the *Legiſlative Power*, where this *Gentleman* does acknowledge a *Right* in the Biſhops to be preſent. Why they did *then* withdraw themſelves, ſuch as were not *Eye-witneſſes* or *Obſervers* of *thoſe* times, may beſt learn from Mr. *Hobbes* his *Hiſtory* of them.

To conclude, the Author does *proteſt*, that he hath the very ſame *Deſign*, *Aim*, and *Wiſhes* with that *Gentleman*; for *that Right may prevail is the natural wiſh of every good man.* And the *prevention* of thoſe *Miſchiefs* which the *Enemies* to our Religion and *Government* have *plotted*, and do *atchieve* to put in *execution*, has *incited* me to this task *to ſatisfie my ſelf and others, where the Right is.* My Sentiments herein *I* humbly *ſubmit* to the *High* and *Honourable* Court of Parliament; and if I have written any thing that gives a *juſt cauſe of offence* to my *Superiors*, I do here ſolemnly *retract* it.

This *Gentleman* is *Ingenuous*, and leaves his Reader to his *Liberty*, to weigh the Arguments on *both* Sides, and *judge* for himſelf. I have taken the *freedom* he allows me, and delivered my Opinion: I pray take you the *ſame* courſe without *Partiality*, and then judge for your ſelf.

*FINIS.*

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